



NEGOTIATING IN MARRIAGE CONTRACT: A SOCIO-LEGAL STUDY

THESIS

SUBMITTED FOR THE AWARD OF THE DEGREE OF

Doctor of Philosophy

**IN
LAW**

**By
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**Under the Supervision of
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ABSTRACT

The requirement of our age make it necessary to examine and weigh once more many Islamic legal matters about which it is no longer enough to accept the old assessment with the passage of time. There is no clarity in the mind of people regarding sources of Islamic law, which influence all the matters relating to it. The most fundamental problem concerning the system of family rights, or atleast one which is one of the same level as the fundamental and complex is, firstly, how parties negotiate in marriage contract? Secondly, whether this give the right to choice to the parties ? and when there is denial of consent by parents and when her consent in marriage was not generally thought to be necessary. So women was obliged to submit to the wishes of her parents, this directly conflict with religious, legal and secular norms in contemporary society globally.

Marriage under Islam is a unique institution. The institution of marriage which constitutes the foundation of personal, family and community relationship, is the backbone of our social system in the society of Islam, has been the subject matter of judicial interpretation in India. It is first considered in famous case of Abdul Qadir Vs Salima. The Islamic institution of marriage is known as Nikah/Aqd. Marriage in Islam is a highly recommended practice (Sunnah). Present work scrutinize negotiations in marriage contract and their related issues.

The present study was undertaken keeping in view the following broad objectives :

1. To spread awareness, knowledge and information regarding the status of women in Islamic Shariah.
2. To evaluate the cases as in actual practice consent is lacking during marriage negotiations though Quran and Sunnah provides this explicitly.
3. To highlight importance of her right to choice and its implementation in accordance with Shariah laws in the future generations.
4. To inculcate awareness among Muslim women regarding of standard nikah-nama and its contents to avoid demise of their legal rights conferred by Almighty.
5. To show the importance of compulsory registration of marriage so that it avoid post marriage hazards.
6. To be aware with religious and legal laws those conferred social status to women.
7. To avoid misinterpretation of Islamic text in future by estabilising Muslim matrimonial code which is headed by ulema.
8. To evaluate the existing legal measures and to assess the impact of codified part of Muslim law.
9. To draw conclusions and to put forward suggestions in order to eradicate the menace of forced Marriage Negotiations.

For conducting the study one shall have to divide the whole work into number of chapters, so as to give a correct picture to the reader with regard to conduct of work. The present study consists of seven chapters.

In order to understand the subject matter its introduction is very important. It deals with plan of study, study area, research methodology, conceptualization of change, the objectives and hypotheses which one has to discuss in the study. Under chapter-I Further this chapter sub divided into following parts as to discuss about origien of Isalm, Islam in India, followers of Islam, Muslim community : a profile and historical sketch about education of Muslim women.

Chapter II provides an insight into the concept of institution of marriage has been analysed. This chapter has been discussed under different parts namely as, aspects of Muslim marriage, ordinary contract vis-a-vis marriage contract, effects of a valid Marriage, importance of consent during marriage negotiation, its comparison with Hindu law, option of puberty and marriage by guardianship has been discussed.

Chapter III devoted to Islamic Feminism. This chapter sub divided into 5 parts namely, Islamic Traditions and the feministic movements and factors thereof, directives for the feministic movement in an Islamic environment, form of an Islamic feminism and brief history about feminism in west and feministic awakening and movements lastly.

Chapter IV focusses attention to the role of Human Rights in Islam and its affects on matrimonial laws. This chapter further focuses on Islamic approach and western approach about human rights.

Chapter V is intended to analyse with the help of statistical package of social science. The respondents were ask to record their responses on attitude scale. Results were tabulated on the basis of simple percentage method and their graphical representation included at appropriate places in this study. To analyse various hypotheses and to put them on test a questionnaire was prepared and a field study was conducted. The object was to ascertain impact of negotiation in marriage contract with detailed description about each issues. In certain cases even personal interviews were also conducted. The findings were tabulated, analyses and discussed in detail.

Chapter VI attempt is made to analyse legal cases and theirt judicial interpretation under marriage. The institution of marriage constitutes the foundation of personal and family relationship. It is backbone of social system in the society of Islam. The institution has been the subject matter of judicial interpretation in classical judgement of Abdul Qadir Vs Salima (1886) 8 All. 149. where the courts held that Muslim marriage is nothing but civil contract. This controversial judgement continued even in subsequent cases, i.e. Anis Begum Vs. Istafa Hussain(1933) 55 APP 743, where Sir Shah Sulaiman, C.J. delivered the judgement in length discussed and evaluated the 'purely civil contract notion' evolved by Mahmood, J. He further pointed out:

"....but if the consummation of marriage has taken place and

the part of dower remains unpaid it would be absurd to suppose that the Marriage could be cancelled by wife at her will...."

Unlike western concepts where celibacy is regarded as the most approved way of life. Islamic approach accepts marriage as an essential requirement for the well-being of individual and the society. It is Islam which stop this evil. The limit placed on sexual relations by Islam promote genuine interests of the present and future society. So this chapter points out the critical appraisal of the cases on marriage negotiations.

The last and final chapter deals with the conclusion and suggestions, which may be helpful for the growth of Islamic Matrimonial jurisprudence in accordance with the path shows by Allah, inter alia.

Findings of the Survey :

In summary the data shows that in the Aligarh district 90 % population is literate and non formal form of education have also contributed in raising the literacy rate of Muslim women. Women have had access to and had benefitted from other forms of education. Even in semi-urban and rural areas women have religious education and counts as literate. However those 10% are illiterate, they are migrant home based workers came from Bihar region for employment. But Findings also shows that in most of the family male members get preference over female in every matters. This evidence shows that the

education levels are declining in the rural women. Education per se does not inform women's awareness as about Muslim personal law, importance about contents of nikah-nama, compulsory registration marriage, knowledge about their social status rights as enshrined in Quran and sunnah, importance of consent in marriage negotiations and unhealthy attitude of Indian judiciary.

Women with formal education who have opted for Muslim personal law to be retained without reform more than women with no education who preferred its replacement with gender just secular laws. Majority of women in Aligarh district working and even some housewives earning through the self employment like embroidery and handicrafts. In home based workers conditions are poor, their income does not exceed Rs 500 a month. These women totally ignorant about their religious and legal rights though they offer prayers and read Quran. Women therefore participate in the employment as a need to sustain and support their families.

These are teachers, office employees, lawyers who earn their handsome amounts in comparison with home based workers and housewives.

Formally educated women want to marry according to their choice but they submit her wishes to their parents and marry according to their parents choice. But all the respondents in this survey want compulsory registration of marriage. Participations of these women in marriage negotiations with the permission of their

elders. Thus we can find that there is clear relations between education, employment and decision making during marriage negotiations. Educations influence women's awareness and enhance their aspiration for changes and reformations under laws as well as strict imposition of laws when their is curtailment of their rights. All the respondents in this survey wanted to enact Muslim personal matrimonial code.

Women in many Islamic societies lack personal autonomy. Before marriage they are under the tutelage of their father or other male relatives. According to hypotheses findings of this designated research confirmed that they are expected to marry a husband chosen by her before marriage she obey her parents, after that obey their husbands, bring up children, stay at home and mostly avoid participation in public life. At every stage of their lives, they are denied freedom of choice and their consent in different matters. They may be forbidden to acquire an education, prevented from getting a job and thwarted from exploring their full potential as members of the human community.

If we have watched an official Islamisation programmes in Saudi Arabia, Pakistan, Iran, Sudan and Afghanistan have led to serious violations of the human rights of women. Muslim conservatives in all Islamic countries, and even in nominally secular India, have refused to recognize women as full, equal human beings deserving of the same rights and freedoms as men. In actual practice this thought should not be in consonance with Shariah.

Laws and practices governing women's personal status, their legal capacity and role in the family continued to deny women rights. While this type of discrimination varied from region to region, women throughout the world found that their relationships to male relatives or husbands determined their rights. Some Saharan countries continued to use statutory and customary law to discriminate against women with regard to their status, property ownership and inheritance. So far as Nigeria, Ghana, Kenya, Uganda and Zimbabwe are concerned their statutory law reforms over last twenty years gave women equal rights to inheritance but judges in these countries continued to apply customary law, meaning thereby the situation is not improving in cases of women's issues.

For instance personal status laws in Syria and Morocco, among other countries, continued to curtail women's right entering into marriage contracts, during marriage, and at the dissolution of marriage. For example, in Syria, the minimum age for marriage was eighteen for boys and seventeen for girls. If a woman over the age of seventeen married without the consent of a male guardian, the guardian could demand the annulment of the marriage if the husband was not of the same social standing as the wife, and as long as the wife was not pregnant. The findings of these two countries corroborated and prove the survey findings in the Aligarh district, where researcher also highlight same sort of result in this study. Further, a Muslim Syrian women could not marry a non-muslim, while a Muslim man had absolute freedom to choose a spouse from other religion. Syrian law also assigned different rights and

responsibilities for women and men during marriage negotiations. A wife's "disobedience" could lead to forfeiture of her husband's responsibilities to provide support. A man could legally have rights up to four wives simultaneously, while a woman could have only one husband. Women did not have the same right as men to end marriage; while the personal status law provides for the unilateral and unconditional right of a husband to effect divorce by repudiation, a woman seeking divorce was required to go to court and prove that her husband neglected his marital duties.

Women's rights activists globally continued their long standing campaign to eliminate discriminatory provisions in the personal status code or their wrong interpretation while deciding a case which causes discrimination against with respect to women's legal rights in marriage, divorce, child custody and inheritance. For example in Morocco, it appeared that, as was the case with the reform of the personal status code in 1993, the king would be the final arbitrator on women's rights. On March 5, 2001, the king Mohammed VI formed a royal commission comprising religious scholars, judges, sociologists and doctors to consider amending the code. In a speech on April 27, 2001, he reiterated his commitment to improving the status of Moroccan women and eliminating discriminations against them according to the Islamic shariah and the values of justice and equality. Though an advisory committee appointed by Prime Minister El-Yousoufi had failed to act on the issues during 2000. It will be ironic if a country like India and Islamic countries which so loudly profess

its commitment to improve the women status is not serious.

In the midst of the darkness that engulfed the world, the divine revelation echoed in the wide desert of Arabia with a fresh, noble and universal message to humanity: "O mankind keep your duty to your Lord who created you from a single soul and from it created its male (of same kind) and from them twain has spread a multitude of men and women (Quran, 4:1). It is believed that there is no text, old or new that deal with the humanity of the woman from all aspects with such amazing brevity, eloquence, depth, and originality as this divine decree.

The Quran clearly indicates that marriage is sharing between the two halves of the society. Its basis are love and mercy.

According to all the provisions for her shows protection at the time of marriage, it was specially decreed that woman has the full right to her mahr, a marriage gift, which is presented to her by her husband and is included in the nuptial contract, and that such ownership does not transfer to her father or husband. The concept of mahr in Islam is neither an actual or symbolic price for the woman as was the case in certain cultures, but rather it is a gift symbolizing love and affection.

- Women consent in Marriage was not generally thought to be necessary and she was obliged to submit to the wishes of her parents and then submit to her husband and her lord, even though they were stranger to each other. Family laws pertaining to marriage and divorce that reinforce the image of relationships based on hierarchy with the

rights of the husband superceding those of the wife and that prevent women from being in control of their lives.

- Women want equality with men and in most recent women's movements the concept of "personal choice" has become central. Over the years, feminists have devoted considerable energy and resources to preserving women's right to choose her life partner, expanding the number of options her women to chose from, and mobilizing sufficient resources to enable women to act on their own desires rather than those of their families.

- A compulsory system of registration of Muslim marriage and divorce should at once be introduced by the government. The proposal to work on optional law by means of officers styled Qazi would lead to no beneficial results. Inspite of opposition of certain sections of Muslim community it may be said that a compulsory registration of marriage law would be regarded as a public boon by the majority of Muslims.

- A compulsory system of registration of marriage and divorce exists in all Muslim countries, so why not in India ? This is high time to enact Muslim personal matrimonial code.

- Indian Muslims should develop effective non governmental organisations to launch literacy compaigns, particularly for women literacy.

- Abuses of certain Islamic practices that affect women negatively, such as polygamy and temporary marriage when applied

out of context and without abiding by Islamic restrictions should be controlled by strict implementations of laws.

- There is need to enhance frequency of Muslim women in the Muslim personal law board so that they take their problems in a right perspective.

Those who desires to change in Muslim Personal law argue that on the whole Muslim law in respect of women tends to be quite progressive. Marriage is civil contract with equal rights for both the parties to stipulate conditions as marital contract would be valid on fulfilment of those conditions. Thus woman may always stipulate conditions which would protect them from whimsical behaviour on the part of the spouse. A woman can always stipulate that the husband shall not take a second wife at all or without her previous consent. Both these conditions will be Islamically valid. She can also delegate to herself the right to divorce on behalf of her husband (known as talaq-i-tafwid) in her nikah-nama (marriage contract). Some nikah-nama have also been devised to include these conditions in a standard form.

The main areas of reforms in the Muslim Personal law are as follows :

- a. Polygamy
- b. Arbitrary divorce
- c. Maintenance after divorce
- d. Review of consent doctrine
5. Uniform civil code etc.
6. Enactment of Muslim matrimonial code.

Many eminent Muslim scholars of the subcontinent, like Syed Amir Ali, Maulvi Chirag Ali, Sir Syed, Sir Mohd. Iqbal and several others have advocated for reforms in Muslim Personal law and greater justice for women. Educated women hereself want reforms under Muslim Personal law in certain issues.

Instead of common civil courts women want separate Muslim matrimonial code in the future.

But instead of reforms we submit there is need to establish theories of adjustments under matrimonial laws in light of Shariah.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

عَلَّمَ الْإِنسَانَ مَا لَمْ يَعْلَمَ

He (Allah) taught man that
which he knew not
(The Qur'ān 96:5)




Dated...30.12.2002...

CERTIFICATE

This is to certify that Miss **Tanzeem Fatima** has completed the present research work entitled “*Negotiating in Marriage Contract : A Socio Legal Study*” under my supervision Her research work is an original contribution towards the academic excellence She has fulfilled all the requirement needed for the submission of this research work Throughout her research work, she has been sincere, studious and highly obedient I further certify that the instant research work has not been earlier submitted elsewhere for the award of any Ph D Degree I deem it a work of high quality and excellence for the award of Ph D Degree

I wish her all the success in life


(Prof. Saleem Akhtar)
(Supervisor)

FOR
MY
MOTHER & FATHER

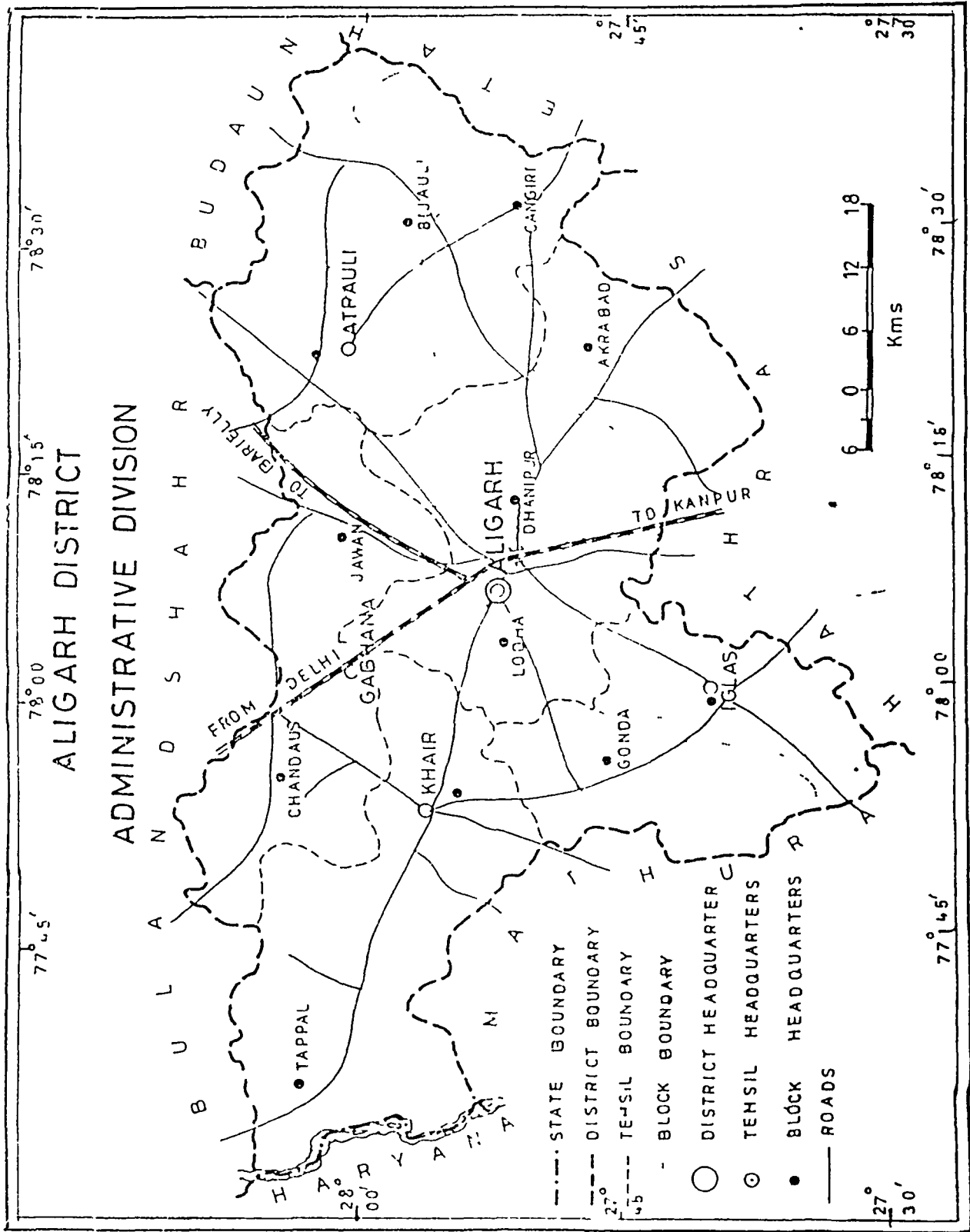


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ABBREVIATION

A.L.J.	Aligarh Law Journal
All. E.R.	All England Report
All.	Allahabad
Art.	Article
C.W.N.	Calcutta Weekly Notes
Cl.	Clause
D.M.M.	Dissolution of Muslim Marriage
F.A.	Federal Appeal
F.B.	Full Bench
f.n.	Foot Note
H.C.	High court
I.C.	Indian cases
I.L.I.	Indian Law Institute
I.L.R.	Indian Law Review
K.L.J.	Kerala Law Times
L.R.	Law Reports
M.L.J.	Madras Law Journals
M.P.L.	Muslim Personal Law
M.P.L.B.	Muslim Personal Law Board
P.B.U.H.	Peace Be Upon Him
S.A.W.	Sallallahu Alahi Wassalam
S.C.	Supreme Court
S.C.C.	Supreme Court cases
Sec.	Section
Vs	Verses
W.R.	Weekly Report

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and support enabled me to complete this work. Moreover, their blessings have been the source of encouragement throughout my career.

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INTRODUCTION

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CHAPTER - I

INTRODUCTION

Family, society and ultimately the whole of mankind is treated by Islam on an ethical basis. Differentiation in sex is neither a credit nor a drawback for the sexes. Therefore, when we talk about status of women in Islam it should not lead us to think that Islam has no specific guidelines, limitations, responsibilities and obligations for men. What makes one valuable and respectable in eyes of Allah, the creator of mankind and the universe, is neither one's property, position, intelligence, physical strength nor beauty, but only one's Allah's consciousness and awareness (taqwa). However, since in the Western Culture has also influenced by it, here exists a disparity between men and women there is more need for stating Islam's position on important issues in a clear way.

Marriage is a social institution as old as the human race itself. It may be defined as a relation between a man and a woman which is recognised by custom or law and involves certain rights and obligations, both in case of the parties entering the union, and in the case of children born of it. Marriage has thus two main functions to perform. It is the means adopted by human society for regulating relations between sexes; and it furnishes the mechanism by means of which the relations of a child to the community is determined.

According to Islam, life is not a wretched prison or a dark grave, nor is it a happy hunting ground where one is absolutely free

to hunt whatever ones likes. It is life worth living provided one tries to live within proper moral limits. Thus in the ideal life of Islam there is no place for shifting the natural psychic, impulses. Islam's approach to life is not negative "a systematic letting die of all the propensities of life" which, in simple words, is called self mortification. Islam exhorts its followers to live life with full zest and vigour. In other religions piety lies in denying oneself resolutely and joyfully in the arms of life, but not be over powered by its carnal temptations. Islam believes that there is nothing superfluous and nothing evil in human impulses. These are creative forces given to man provided they are properly made use of it.

The monastic life which is considered to be an ideal life according to the wrong concept of religion is not the one required by Allah because it makes a man emotionally selfish, much to the neglect of all social responsibilities. It hardens the heart and fosters the sense of ingratitude towards those who are bound to the so-called saints by the chords of the earthly ties. Mothers are abandoned, wives are neglected, and children are left alone as a beggars to the mecercies of the world. The ascetic is concerned with the salvation of his own soul. The serenity of his devotion is considered to be impaired by the discharge of the simple duties of his family and to his community and state.

Marriage is an important institution of human life. So in practice it must be in conformity with Quranic provisions. Islam

recognises this institution and accepts it as the basis of human society after purging it all those evils which had penetrated in it. Firstly, Islam does not regard it as a union only for the gratification of sexual lust, but a social contract with wide and varied responsibilities and duties. The reason behind is that, according to divine faith, a woman is not a plaything in the hands of man, but a spiritual and moral being who is entrusted to him on the sacred pledge to which Allah is made as a witness. The wife, is therefore, not meant to provide sensuous pleasure only to the male, but to fully cooperate with him in making the life of the family and ultimately of the whole humanity significantly meaningful.

Marriage engenders love at first for wife, then for children, then for kith and kin, then for the society and ultimately for the human race as a whole. The real unit of human civilization is the family and there can be no family if there is no marriage. So we should be aware with terms and conditions during marriage negotiations.

Today there is need to incorporate and codified laws in light of women issues and with their speedy redressal. Muslim Personal laws as interpreted and practiced in India are grossly discriminatory and oppressive to women. In order to establish equality in law, there is need for reforms in Family laws. Personal laws are governing many issues which concerned to Muslim women. They are significant because these issues are discriminatory to women hence need urgent attention in future.

1. STUDY AREA

Aligarh is one of the important district of Uttar Pradesh located in the north western part of the state at a distance of about 130 kms from Delhi. It lies in the Central part of the Ganga-Yamuna Doab. It is bounded by Bulandshahar district in the north, Mathura district in the south and south-west and Etah district in the east and south-east. The extreme north-eastern boundary is formed by the river Ganga which separates Aligarh from Badaun district whereas the extreme north-western boundary is formed by the river Yamuna which separates Aligarh from Gurgaon district of Haryana state.

The district has been divided into six tehsils, namely Koil, Atrauli, Sikandra Rao, Khair, Iglas, Hathras.

Table I : Administrative division of Aligarh District (1996).

S.No.	Tehsil	Blocks
1.	Koil	Dhanipur Lodha Jawan
2.	Atrauli	Atrauli Gangiri Bijauli
3.	Sikandra Rao	Akrabad Sikandra Rao Hayasan
4.	Khair	Khair Chandaus
5.	Iglas	Tappal Iglas Gonda
6.	Hathras	Mursan Sasni Hathras
7.	Total Alighr District	17 Blocks

Source : District Statistics Office, Aligarh (U.P.) India

2. CONCEPTUALIZATION OF CHANGE

In order to understand the kind, degree and nature of change among Muslim marriage negotiations, it has been found useful to adopt Raymond Firth's concept of organisational change under Muslim marriage and Ogburn's concept of cultural lag. According to Firth any theoretical framework for the analysis of social change must be concerned with what happens to social Structure. Further he distinguishes between 'Organisational change and 'structural change' under Marriage laws., the organisational change does not alter the basic relations between individuals and hence cannot be termed as a change in social structure. On the contrary, structural change occurs when there is a modifications in the basic relationship between members of society. Firth's 'dynamic social theory' will be used to understand the changing situation found in the present study. A 'dynamic social theory' involves basically the idea of movement from one social condition to another. Such movement may be reversible or irreversible, gradual or rapid, it may occur in one major institution only or in several at the same time. It may be without noticeable disturbance of inter - personal relationships or it may be violent and disruptive.¹

The analysis of social system by the 'dynamic social theory' would demonstrate whether the social change is, "repetitive, structural, gradual, radical".² Further, discussing this dynamic process Firth³ says that, "The essence of dynamic process lies in the

continuous operation of the individual psyche, with its potential of unsatisfied desires for more security, more knowledge, more status, more power, more approval within the universe of its social system. The process of social change can take their indicative from within a society they may be stimulated by external forces". While discussing change one should be well aware that continuity and changes are well integrated in the social system, and one can study the changed situation only in comparison with the tradition social system and in Muslim society it should be in consonance with Shariah laws.

The present Muslim society will be seen against the back drop of the traditional structure reconstructed from classical sources, and exemplifying the ideal pattern of Muslim life, under various aspects. This will be treated as the base line material against which the working of the present Muslim society will be understood. The cultural background will be fitted in it by information gathered from old informants about the life style that existed in immediate part the period of time since 1947. This date is adopted because partition was a significant landmark in the social history of India, as also for the reason that this span of time is not too long a period to remember and recall by the surviving older informants. The existing pattern of Muslim society is studied and analysed to understand the continuity and changing aspects, and the forces and factors responsible for altering the social situation.

As mentioned earlier to grasp the dynamic nature of the present culture under study, the use of the concept of 'cultural lag'

will be made. Ogburn theorizes, "that the various parts of modern culture are not changing at the same rate, some parts are changing much more rapidly than others; and that since there is a consideration and interdependence of parts, a rapid change in one part of our culture requires readjustments through other changes in various parts of culture"⁴ Ogburn views, culture in three main sectors, technical productive system, adaptive part and non-adaptive part, the interrelation and co-ordination of these three sectors in cultural organisation makes for the dynamic nature of the society. Every culture tries to maintain itself in equilibrium, but, a perfect stage of equilibrium is never reached. In the present study instead of asking two broad distinctions in the non-material part of the culture, all the functional areas of the culture will be distinguished into sectors, like education, marriage, economic status, religious education, consent doctrine, right to choice etc. The interplay between these sectors and their respective influence on each other, in respect of position of women in marriage negotiations in the family social system at a definite period of time would be studied. Here time factor has been emphasized because the various socio-legal events takes place in different periods of time, affect the working of the internal system of the society. Finally, an equation will be derived to show which of these sectors lag behind and are unable to adapt and adjust towards determining the status of women in society in accordance to the requirement of time and in light of Quranic spirit as well.

Generally, in every culture there are two set of trends, one section tries to retain the conservatism into basic value system and the other adopts and changes into value in view of the requirements. The ever existing differences and tussle existing between these two trends make the study of the process of culture change interesting. To assess the impact of these value system, women surveyed are school teacher, lecturers, home based workers, office employees, lawyers of different age groups, have been studied assuming that their respective basic value system should be dependent upon their being born and brought up at a certain period of time. As this study highlight the attitudes of the parents while deciding fate of her daughter by marriage contract. Here in many cases they do not want to change their values of the culture as they are not consented to their daughters. Hence, this study will be hopefully clarify those of the functional sectors produces the cultural way and secondly, which basic values of the culture are hold to change and why and what necessitates its alteration or change.

3. REVIEW OF LITERATURE

In order to understand the problem in right perspective one must have an idea about existing literature on the subject. This will enable to understand problem and come out with the solution to that problem. During the present study, the researcher came across with a large quantity of literature on the subject. So it was felt necessary to have a bird's eye view of that literature in order to draw certain inferences and conclusion.

The primary sources of this study is Quran, Sunnah, juristic work produced by four renowned Imams and Shariah laws. Academicians, both from India and abroad, have expressed their views in this issues but all these studies were of general nature conducted in the form of articles or books form under the title Islamic law, which are useful for theologians, law students, lawyers etc. however, these studies have not been conducted from a proper research point of view and in some specific areas. As no prior work is done, this topic is exclusive and entirely new and fertile. Though this work has also left ample scope from further intensive and independent work to grow Islamic jurisprudence.

The proposed study as mentioned earlier is based on primary sources i.e., Quran, Sunnah and other secondary sources such as reports, journals, fatwas and commentaries etc. The proceedings of the conferences and symposiums have also been utilized in the doctrinal part of said study. In the empirical part inferences and conclusion has been drawn through by conducting survey through questionnaire and with interview schedule and distributed it among respondents. Care was taken while preparing mixed form of questionnaire. Then data was tabulated separately on the basis of the responses received from the respondents. The respondents were asked to record their responses in "yes" and "no" form and also put her "opinions" at some questions. Results were tabulated finally through the "Statistical Package for Social Science" research.

The theological, sociological, anthropological and legal literature has no dearth of works on the position of women in different societies. For this particular study the Indian Muslim women were chosen and their position has been assessed with in their families. The books consulted were categorized as follows: Firstly, for understanding Muslims and their culture-historical background in the world, books dealing with Islam and Islamic culture were consulted. Next the available literature on women in Islam was read. The second important category of books was various work done on Indian women, special emphasis given to urban women.

The literature on feministic movements in Islam is vast and worth to quote here. The work of these authors as, Najmabadi, Afsaneh (1997, 1998) where he particularly emphasized the position of feminism in an Islamic Republic. Ronald, Anne Sofie. (1998), Tohidi, Nayereh. (1997) and Rupp, Leila J. and Verta Taylor. (1999), Shahidiah, Hammed. (1994) all these authors scholarly work on Islamic feministic movements is important for any feministic research about Muslim women. The work done by L. Ray, Marilyn (Ph.D. work from Lornell University), 1988. Alton, Thomas, Smith, (Ph.D. work from York University, Canada), (1988), have special mention.

To ascertain the contribution, deviation and distortion by judiciary original sources of Islamic jurisprudence have been taken up throughout the study as touch stone. For the important and relevant original sources of Islamic jurisprudence, the libraries of Darul Uloom, Deoband, Saharanpur, U.P., Nadwa-tul-uloom, Nadwa

Lucknow, Islamic Library, Hamdard University Delhi, Seminar Libraries of Faculty of Law, Aligarh Muslim University, Faculty of theology, Aligarh Muslim University, Aligarh, Maulana Azad Library, Aligarh Muslim University, Department of West Asian Studies, Aligarh Muslim University, Department of Islamic Studies, Aligarh Muslim University, Department of Arabic, Aligarh Muslim University, Centre for Women Studies, Aligarh Muslim University, Aligarh, Indian Law Institute, New Delhi, All Indian Women Conference, New Delhi, Iranian Culture House, New Delhi, Libraries are used to complete this work.

For the completion of the objective set to be achieved in the present study researcher had gone through all the original old texts and other authoritative work done by various scholars. Firstly, for understanding of Muslims and their cultural historical background in the world, books dealing with Islam and Islamic culture were consulted. Next the available literature on women in Islam was read. From the vast literature of Islam and Islamic Laws, the following books were extremely helpful in understanding.

For Islamic Law following writers were a great help, Ameer Ali (1922); A.A.A. Fyzee (1974), Abdullah, Yusuf Ali (1940); Abul Ala Maududi (1968), J.N.D. Anderson (1965); Anwar Ahmad Qadri (1961); Arthur J. Arberry, David Pearl (1979); D.F. Mulla (1961), Dr. Galoush work on Marriage under Muslim law, M.U.S. Jung's work, Tahir Mahmood's work on Islamic law, Prof. Saleem Akhtar's work,

Sahih Muslim, Bukhari Sharif, Hedaya by Hamilton, Riaz-ul Hasan Gilani (1982), all the above mentioned authors have great help to grow entire Islamic law.

For the completion of study following websites are important as :

- web on <http://www.legacy98.org/index.html>
- Web on <http://www.nwhp.org/html>
- Web on <http://amnestyusa.org/women/html>
- arches.uga.edu/~godcos/IsLaw_women.html.

These websites consists lacks of other connected website which highlights important issues such as women in Islam, women and human rights, women and feministic movements etc.

The important work by Adulaziz, Sachedina in "Women Half - the Man : Crisis of Male Epistemology in Islamic Jurisprudence by University of Virginia is worth to mentioned, (2002). Another scholarly work done by Amina Wadud, Aishah's legacy : the Struggle for Women's Right in Islam in New Internationalist, (May 2002), Jamal Badwai's work on Gender Equality in Islam, under Muslim Women's League. (fixed 13, Sept. 1999), Mai Yamani's work on Feminism and Islam : Legal and Literary Perspective (Back on line 4/28/98), Nahid Mustafa's work entitled My Body is My Own Business (fixed Line June, 1999), above authors contributed much to enhance, the Islamic Literature on Women issues.

Mujeeb (1967), which dealt with historical and social development of Islam in India. Other workers were also equally helpful in understanding the Muslims some of them are : Smith, W.C. (1946); Levy, R. (1957); Aziz Ahmad (1969); Shakir, Moin (1973); Mathur, Y.B. (1972). The books like Siddiqui (1952); Djebbar, Assia (1961); Bareja, M.R. (1960), Islamic review (1959, April and November) issues have articles on the women of Morocco and the role of women in the life and literature of Pakistan. Jandy, Edward, C. (1959), Atikson, J. (1832). Maududi, Abul Ali (1970) in Urdu all gave a background to the understudy of women as they have been viewed in the religion and in other Islamic countries.

The different social groups amongst the Muslims forms a very debatable and controversial topic. Ansari, G. (1990) had divided the Muslims of India into various caste groups. Ansari's work was further modified by Ahmad, I. (1973), this books contained essays on Khajas of Bombay, Meos of Rajasthan and Haryana, Mappillas of South-West Coast of India, TAMILIAN Muslims, Muslims of Uttar Pradesh, Muslims of rural west Bengal and Muslims of Laccadives, The special series of contribution to Indian sociology (No. VI, December, 1972) deals with various topics related to Muslims women, Guha, U. (1965) in her paper depicts the caste system among the rural Bengali Muslims.

The literature on position of women is vast and extensive. One of the earliest and systematic accounts of the position of women

had been given by Lowie, H.R. (1920), where he particularly emphasized the difference existing in theory and practice as regards position of women in any society. Evans Pritchard, E.E. (1965) tries to analyse the position of women through the role of women in complex and simpler societies. Some of the other authors who make a significant contributions towards the topic of women are Montagu, A. (1954); Mead, M. (1949); Linton, R. (1952); Myrdal, Alva and Klein, Viola (1956). The status of women in the south Asian countries has been assessed by Appadorai, A. (1994). In this book the legal status and political rights of women have been discussed and a method of approach to the problem of status of women is suggested. The next important UNESCO publications was edited by Ward, B.E. (1964), in this, the essays of Dube and Thapar give the historical women through the ages. Moreover, Karim's paper on the changing patterns of an East Pakistan family and Rosses study of changes in the position of Malay women and other essays give a good picture of the women's position in Asian countries. Mukherjee (1994) in her paper discusses some aspect of the problem of women.

The works on Indian women are many and varied. Altekar (1956) and Pinkhan, M.W. try to evaluate the status of women in historical times through the numerous religious scriptures on Hinduism. Mishra, R. (1967), depicts the social and cultural environment, and their effects upon the status of Muslim women within the period of (1526-1748). Cousins, M.E. (1991), Thomas, P. (1964) are the two authors who have efficiently succeeded in

compiling the status of Indian women chronologically. A Government of India Publications, edited by Baig (1958) has a collection of essays ranging from those on tribal women to modern Indian women. Moreover there are plenty of literature on the changing status of the Indian women after independence. Notably the works of Hate, C.A.(1969, 70); Mehta,R. (1990); M. Cormack (1991); Bhasin, K. (1973;Desai, N. (1957), Shridevi, S. (1965) and Kapur, P. (1070), on marital adjustment under working wives (1971); Roy Shibani work on status of Muslim women in North India (1979); Harpar (1969) has tried to depict the status of Brahmin women while, Sen Gupta, S. (1970) has tried to assess the position of Bengali Women through the analysis of their socio-economic background and matrimonial advertisements. A periodical named Woman on the March issued by (Women's Department of All India Congress Committee, New Delhi) gives articles of interest such as problems faced and changes occurring amongst Indian women and women of the other countries of the world. A report entitled " Relative Freedom of Women", produced by the Council of Social Development (Nov., 5 Dec. 22, 1993), attempts a comparative analysis of married women of Sunder Nagar colony and Mandir Harijan colony of New Delhi. The results of the study reveals that the low income group sweepers have a highly traditional image of wife while the Sunder Nagar husbands have modern image of the wife. Decision making in various family matter is directly dependent upon the economic independence of the wife. Kaberry, P. (1939) through extensive field work analyses the status of

women amongst the Australian aborigines. Dingwall, E.J. (1956) historically traces the status of American women and Time Magazine (No. 21, 1989) discusses very interestingly the revolt against feminism in the West. Some particular studies done on the Muslim women are by Khojas, B.A. (1965), who in her survey of the Kanpur Muslim Women Comments on their attitude towards Pardah.

Korson, J. Henry (1970, 90) in his paper entitled as Career Constraints Among Graduate students in a Developing Society West Pakistan. A Study in Changing Status of women, brings out the changing status of Pakistani women by analysis of their career. Vreede-de-stuers, C. (1969) after her field work in Delhi and into adjoining area tries to interpret the prevalence of Pardah and the changing mores amongst the North Indian Muslim women. Tayyaba, Khatoon (abstract 1967, Science Congress) has recorded the type of marriage alliances practiced by Indian Muslims. Basu and Roy (1972) in their papers give the increasing frequency of consanguineous marriage among Delhi Sunnis. Dube, Leela (1969) gives an account of a matrilineal Islamic society. Mutahhari, Murtada (1981) explain the Rights of women in Islam very nicely, Siddiqi, Iqbal, Muhammad (1998) in his book 'The Family laws of Islam' elaborate and discuss whole law of Islamic Marriage. Gangrade, K.D. (1978) has done pioneer work relating to Muslim Marriage, divorce, Inheritance etc. Mehta, Rama (1987) talks about the socio-legal status of women in India. Work of Nainar, Wahida (2000) and All reports published by Women's Research and Action Group Vol. III Issues I, (1995) for

projecting women issues through thorough field work with suggestive remedies. Siddiqui, H.Y. (1992) highlight the studies relating to Muslim Women in India. Siddiqui, M.K.A. (1994), Singh, S.K. (1998), Srinivasan, B. Tajfel, H., Sharief, A. (1995), Sayyid, B.S. (1997), Sharma, K.,D. (1978), all these above mentioned authors beautifully explain the status of Muslim women and their problems. Moghadam, V. (1994), Mistry, M. (1995), Miller, R.E. (1976), Menon, N. (1994), Menon, M.I. (1979), Lateef, S. (1983, 1990), Khurshid, S. (1987), Kandiyoti, D. (1988), Hasan, Mushirul (1991, 1995, 1996). Hasan, Zoya (1994), Freire, P. (1985), Brass, F.R. (1990), Bose, A. (1991), Ansari, Iqbal, A. (1994), Akhtar, J. (1992), Ahmed, I. (1983) all the above mentioned authors keen to highlight the socio-political status of the Muslim women. Kutty, A.R. (1972) have done pertinent work in his book on Laccadive Islanders show how the husband does not have economic rights over his wife and cannot demand productive labour. Misra, S.C. (1963) gives a socio-historical account of the Muslims of Gujrat. Arthur, J. (1949), Bellah, R.N. (1965) edited a book dealing particularly with South Asia and in this book the essays by Sayigh, Y. (1965) on the cultural problems and economic developments in the Arab World and Coulson's essay on Islamic law had been particularly insightful of the changing Islamic world of today. Pakrasi, K. and Ajit Halder (1970) give a socio-historical background of polygamy and give certain concluding remarks for the urban Muslim polygynists. Plenty of work has been done in the field of family and its organization. In his book Kapadia,

K.M. (1959) deals with the institution of marriage amongst the Hindus and Muslims using the religious texts of both the communities. Prabhu, P.N. (1954) analyses the family and position of women in the light of psychology, sociology, vedas, epics and literary Sanskrit texts. Ross, A.D. (1961) analytically treats the data of Hindu families in an urban setting and the effects of industrial and technological change. She also discusses the effect of education on occupational opportunities and aspirations of the men and women. Bott, E. (1957) has almost become a classic study of the urban family emphasizing specifically on the ideas of men and women. The book edited by Goode (1963) is an excellent compilation of family studies in West, Arabia, Sub-Saharan Africa, India, China and Japan and in each case the traditional family pattern is contrasted to the changing family pattern.

The contribution of some popular authors like Fyzee, A.A.A. (1981), Diwan, Paras (1983), Derrett, J.D.M. (1968), Firasat Ali Furqan Ahmad (1983), Hidayat ullah, M. (1990), Jain, D.C. (1979), Khan, Maulana, Wahiduddin, (1997), Macnaughten, William, H. (1825), Sachchidanand, Joseph (1964); Sircar, Shamacharan (1873), Wilson, Roland Kneyet (1912) also have Landmark contribution in the field of Muslim Law.

4. ORIGIN OF ISLAM

Islam is a monotheistic religion which arose in the deserts of Arabia in 600 A.D. The founder of this religion was the Prophet

Mohammad (SAW), who is neither a mythological figure nor a demigod, but a man whose entire life, words and deeds are recorded by his followers and compiled in a book named Hadith. The messages of God revealed to Mohammad is contained in the Holy Book, Quran. The primary assumption of Islam is submission to the only God Allah and equality and brotherhood of the believers of Islam.⁵

5. ISLAM IN INDIA

The earliest Muslim invasion of India dates back to 650 A.D. the repeated conquest by Mahmood-bin-Qasim (712 A.D.) in the Sindha valley, the plundering expeditions of Mahmud of Ghazni (1000 A.D.) till the Ravi and the invasions of Shihabuddin of Ghori (1192 A.D.) brought to India the first Muslims. The conquests of Prithviraj's kingdom in 1191 A.D. and the establishment of the Delhi sultanate was the beginning of the continuous Muslim rule in India until the coming of British. The other avenues by which Muslim found their way to India was trade. The first settlement of the Eastern and western works of South India was a result of this immigration.⁶

6. ISLAM AND ITS FOLLOWERS

The Muslims are the followers of Islam. Islam means peace and the quest for a right way of life. The Muslims believe in one and the only God Allah. Secondly, jihad for the sake of religion is sanctioned. All over the world the Muslims pray at the same time with a stylized movement of body and arms, the prayers being conducted in a common language, Arabic. Before the prayers, ritual purification

of hands, face and ankles with water or sand is compulsory. Every Muslim is enjoined to give alms or zakat at least once in his life time, if he can afford it. Last of all, a Muslim after finishing all the duties towards his family goes for pilgrimage to Mecca and Medina. These five essential features of the Islamic faith are shared by the entire Muslim population of the world.⁷

7. MUSLIMS COMMUNITY IN INDIA : A PROFILE

According to the 1991 census⁸, the Muslim community in India comprises about 12% of the total population. The principle of understanding minorities lies not merely in their number but also in their social positions including the psychological perception of their own status based on some shared belief.⁹ The origin of the Muslim community in India as a minority is not the result of a shared belief system among its members, though seemingly it has been constructing as one. As Hasan points out that when the enumerators did the first all India census in 1881, they found that the Muslims, who formed 19.7% of the population were geographically dispersed forming neither a collective entity nor a distinct society for any political, economic and social purpose.¹⁰

According to Chakrabarty, it so happened that the category British chose to fit people in it was religious and hence people in India were categorised in religious groups for official purposes regardless of whether people identified themselves as such.¹¹ Such categories reflected in all their policies concerning the Indians. While

civil and criminal codes were established on the basis of British laws, they left untouched the laws followed by different communities on personal matters. They further reinforced the use of religion to resolve family disputes by using the services of scholars of each religion as 'experts' to settle their disputes. Thus, while any matter may have been settled under customary laws, the British policy now consolidated the notion of religion as the basis for their Personal laws.

Indian thus had the Hindu Personal laws governing the Hindus, the Muslim Personal Laws governing the Muslims and a separate Act for Christians on families matters. The Muslim community was thus constructed, as separate and distinct from the 'others' in complete disregard of, and with no reference to its local, regional, class, caste or linguistic specificities.¹²

The Muslim community in India is generally referred to as socio-economically backward. Many authors have stated this, with or without substantiating it with evidence "The backslide though not quantified by empirical studies, is very obvious. Their (under Muslim community) backwardness, rather persistent downward mobility in the field of economy and education, has of late assumed a magnitude which, if ignored, may cause incalculable harm to our young developing nation."¹³

The Government of India's document on the New Education Policy and Programme (1986) in the Section of Minority Education

declared that Muslims along with Neo-Buddhists are educationally backward on a national scale. Sometimes local and regional figures are quoted to show how education levels among Muslims are low how employment is restricted to occupations giving marginal returns and how therefore the community is materially and intellectual bankrupt. This state of affairs of the community compels one to ponder, whether the community was traditionally a 'backward' one or is the 'backwardness' is a result of the changing contours of the social, economical and political landscape in the Indian subcontinent.

The political background of the Muslim community, since early 20th century, has shaped their present marginal socio-economic, legal and political existence. Muslims have been the victims of discriminations in education and employment. Their political representation has been negligible which over a period of time, has resulted in them being deprived of the benefits of development processes.

The depressing phases of the Muslim community would be better understood if one look at history from 1857 to 1947. Herein lie the origins of the most of the problems of Muslims. The political developments during this period, the factors which influenced there developments and the socio-economic impact on the Muslim community continue to haunt section of Muslim communities even today. Two important historical events viz., the failure of the army revolt against the British in 1857 and the partition preceding independence of India from the British rule in 1947, irretrievably

damaged the cause of the Muslims in India.¹⁴

From the time the British embarked on their empirical and colonial mission in the Indian sub-continent, they identified the Muslims as their adversaries. Major parts of the Indian sub-continent were then under the Mughal empire. At the same time, Muslims all over India had been steadily losing political power and control to the British and other Indian rulers. The loss was particularly pronounced in Bengal, Maharashtra, Madras and Mysore, all coastal regions from where the British began to subjugate the continent.¹⁵ The Indian Army revolted against the British in 1857 and was defeated.

The British held the Muslims responsible for the revolt, believing that the aim of the revolt was re-establishment of Mughal (read Muslim) rule rather than that of the Maratha or the Sikhs. An attitude of suspicion therefore, developed among the British towards the Muslims and it showed in the series of administrative and political measures they introduced. The measures directly affected the three main sources of Muslim economic and political power, namely, military command, collection of revenue, judicial and government employment. With the conquest of the different territories by the British, the edifice of Muslim aristocracy was shaken. Earlier, the East India Company had introduced a system of land management which culminated in the Permanent Settlement Act of 1793. The new settlement deprived many Muslims of their land holdings and estates, as a result of which collection of revenue was seriously curtailed. After the revolt, the East India Company shut Muslim aristocracy out

of the army as they felt inclusion of Muslims would be threat to their security.¹⁶ In the course of few decades, the British also limited the numbers of Muslims in government. For instance, Urdu was replaced by Hindi in Bihar and Bengali replaced Persian as the official language in Bengal. As a result Muslims who held high government offices because of their proficiency in Persian and Urdu lost their employment. Similarly, in the late part of the 18th century, the Muslim criminal code was replaced by British legislation reducing the need for Muslims to interpret and apply Muslim laws. Thus, the Britishers successfully introduced changes which principally affected the economic and political position of the Muslim elite.¹⁷

The charges also affected the Muslim masses, who are mainly converts from low caste Hindus. At the time of their conversion they were at the lowest rung of the socio-economic ladder and had converted to Islam to escape hardship that came along with such a caste placing.¹⁸ The professional groups of the community like Julahas, Dhunias, Khatiks, Dhobis etc. and big mass of manual labourers thus began with a social disadvantage and the economic decline of the Muslim elite class also affected them adversely. Some of them were dependent on the upper class Muslims for their livelihood. The small peasants who toiled in the farms of the land-owners were now out of jobs. The artisans and craftsmen, who were largely Muslims were also fast declining under the impact of the Industrial Revolution in British.¹⁹

Moreover, there was very little interaction between the two social and economic groups of the Muslim community. The elite with all their material comfort and social position did not do much towards the welfare of the masses. Instead, they used the masses and their situation for their own selfish ends without identifying with them. The masses on their part considered this group as the mouthpiece of those in power.²⁰

By 1883, the idea had grown that Indians should have representation in the Legislative Council. A section of Muslim under the leadership of Sir Syed Ahmad Khan were opposed to the introduction of the system of representation, which according to them meant the representation of views and interests of the majority of the population. Two years later, in 1885 the Indian National Congress was formed which supported, rather demanded 'reform and expansion of the supreme and existing Legislative Council, by the admission of a considerable proportion of elected members.'²¹ Though the National Congress attracted many Muslims members, the main opposition to their policies and demand came from Aligarh, the political heartland of the Muslims.

As the Indian National Congress grew in strength attracting members from all communities, the Britishers realised the dangers this cloud pose to their rule. The political unity of Muslims and Hindus threatened British rule and had to be prevented at all cost. The Britishers who were so far suspicious of the Muslims, to their

policy of 'divide and rule'. Despite the hostility of Aligarh, the attendance of Muslims, particularly the younger generation, was increasing at the congress session. Alarmed by the situation, the secretary of the state for India, Morley stated "...You cannot go on governing in the same spirit, you have got to deal with the Congress party and Congress principles whatever you may think of them. Be sure that before by the Mohammedans will throw in their lot with the Congressmen against you".²² He was cautioning the British government to do something to prevent the growing influence of congress while there still remained some dissent among some sections of the Muslims. The partition of Bengal in 1905 into Muslim East Bengal and Hindus West Bengal was an attempt to foster animosity between the two communities and use the strife-torn situation to legitimise and continue British rule in India.

In 1906, the Britishers manoeuvred a move to get prominent Muslim leaders to come together and make a representation to the British government demanding - government employment for Muslims in good proportion, seats on the Bench of High and Chief Courts, nomination of important personalities like landowners, lawyers, merchants, university graduates and representative of other interests for election to Legislative Councils. The Viceroy reassured the Muslims that the rights and interests of the community will be safeguarded in any future administrative reorganisation.²³

The British policy of "divided and rule" paid off the fostering of an opposition to the Congress led to the formation of the

All India Muslim League (henceforth called the league) in 1906. The Muslim elite, who formed the members of the League, developed as their objectives a 'three fold project' to trace the historical evolution of an imaginary community, as an antithesis to the congress theory of 'Unity in diversity'; to emphasize the distinct identity and separateness of this community in order to bargain and exact concessions from the government, and to invoke Islamic symbols of unity to mount a movement that would, in its essential thrust delink specific "Muslim aspirations" from the broader concerns of the countrywide nationalist struggle.²⁴

In the Indian Council Act 1909 electoral scheme gave Muslims separate electorate and also a right to vote in the general electorate. In this scheme this was proposed that the Muslims would first have an opportunity to secure representation for their community through the general electorate, if they failed, they could make up the deficiency by special Muslims electorates to be provided for in election regulations. This created an apprehension in the minds of other community leaders that after securing their proportionate number, the Muslims would prey upon the general seats which were regarded to their own community. In 1909 congress expressed its strong sense of disapproval of the creation of separate electorates on the basis of religion and resolved that the regulations framed under the Act had caused widespread dissatisfaction throughout the country.²⁵

In Indian Council Act, 1909 for the first time, provided institutional legitimation to the nation of a separate, distinct Muslim

political identity. The Act enlarged the scope of communal politics. The Muslim groups, in particular, discovered new terms to articulate their aspirations and insisted on being heard as representatives of their community.²⁶ The political developments of the period that followed only added fuel to the fire and the animosity between two communities viz., Hindus and Muslims increased leading to a series of communal riots in the Muslim dominated Uttar Pradesh district in the North and Bengal in the East. Having achieved its demand for separate electorates, the league with the backing, support and encouragement of the British and under the leadership of Mohammad Ali Jinnah (Late founder of the Pakistan) extended similar arguments and justification to support the two nation theory i.e. the Pakistan project.

Though politically the League achieved its objective, it is not as if the League represented the opinions of all Muslims in the country. Diverse regional and local concerns conflicting class interests and sectarian animus prevented the growth of an all India Muslim political consciousness. For example, the Mappila Muslims of Kerala were cut off from the Indian Muslims by the barriers of language, culture and geography.²⁷ The bulk of Indian Muslim, except those from Bengal, were Urdu speaking and their affinities lay towards the north. These Muslims according to Miller, had no visible interest in the Mappilas and hardly know of their existence.²⁸ Moreover, the Muslim community in the South and origins markedly different from the other parts of the country. In fact there is a strong

assertion by Nadvi.²⁹ That long before the Muslim settled in northern India, there were Muslim colonies in southern India . The Kerala coast was an important part in the trading world of the 13th century and Arabs played a leading role in the loading activity of this time. They made it their chief port of halt and also traded with the locals for pepper, black gold and other valuable products. The local inhabitants warmly accepted the Arabs as traders and of another nationality. The Muslim community thus originated as a result of peaceful economic and cultural exchange between Arabia and Kerala. This process was facilitated by the religious tolerance of the natives. Because of this direct relation of Muslims of the South with Arabian Muslim, the political hegemony, the theological developments and cultural heritage of the Muslims of the north bypassed those in South.³⁰ The identity and communal politics played out in the other parts of the country during the period from 1857-1947 therefore did not affect the Muslim community in the South in the same way.

In the early 20th century, Jamia Millia Islamia was established in Delhi as an alternative to Aligarh as a seat of Muslim political activity. It represented the 'marging of two dominant trends - the religious reformist who were also anti-British and the political radicalists of Aligarh who rejected the institution's pro-British stance and gravitated towards Gandhi and Nehru for political leadership. The League's two nation theory was anathema to Jamia whose sole objective was 'to promote cultural integration, foster composite and syncretic values, and cement bonds, of intercommunity friendship and

understanding.³¹ However, because of the institutional support of the British, the so called recognised political leadership of the Muslim remained with the member of the League, who were mainly the western-educated upper class elite of the community. Thus when the country was partitioned in 1947, there Muslim leaders opted for Pakistan leaving a political vacuum in the Muslim community in India.

(i) Education under Muslim Community During 1857 & 1947 :

Here researcher try to examine the education level under Muslim community during 1857 to 1947 and during post independence era. The next portion has dedicated to the study of women during this period and also during post independence era to assess the impact of educated women in dealing with their family issues.

For the Muslim, education has always been important, but mainly for the purposes of propagating Islamic values. These values have been transmitted through traditional schools called Maktabas, Madrassas and Khanqahs. Other form of education, if at all pursued, has been by the Muslim elite and for the purpose of acquiring knowledge scholarship.³² A report published by W.W. Hunter in 1871 focussed on the educational and economic decline of the Bengal Muslims. In this report, "inability and unwillingness" of the community to take advantage of education was singled out as the chief cause of their backwardness.³³ The conservative and religious

leadership of the community viewed western education, with its excessive individualism and materialism, as constituting the very antithesis of the basic values of life as formulated by the Quran. They therefore argued for a programme of religious purification, together with religious education as an alternative to the 'degenerating' western ideologies which had placed the community in grave crisis. This message was sent through Deoband's Darul-uloom (religious learning centre) for and wide, yet not many as per the high priests there, lived their lives in accordance with their 'fatwa'³⁴

Reports like one by Hunter, fed into the widely misconception that Muslims elsewhere too regarded education in the same way. In fact there is striking difference between Muslims of North India and South India. As Muslims of South had lost their ruling dates much before those in the North and as the former took to modern education much earlier, one finds that their share in business, industry and the professions is quite considerable.³⁵ This was also pointed out by Sir E Gart when he said "In UP, Madras, the Central Provinces and Berar, the Muslims, stand above or on equality with Hindus and the same is the case with Bombay, including Sind."³⁶ In Tamil Nadu, Muslims were a community of traders and they found it profitable to send their children to schools. As also the Deccani Muslims, who avoid office goers took to education like ducks to water.³⁷

Though there was a problem of backwardness of education among Muslims as compared to other communities, it was neither

uniform nor static throughout the different levels of education. At lower levels of education, as noted by Ahmad, Muslims held their own in proportion to Hindus. It was only at higher levels of education that Muslims were fewer.³⁸ Muslims were also unrepresented among doctors of law, law honours and graduates, civil engineers and doctors. Out of 1,373 bachelors of arts, there were only thirty Muslims, the proportion of masters in art was 326 to five.

This paradox is explained with reference to that phase of history that professionally distinguished the upper and middle classes of Muslims from their Hindu counterparts. Most Muslims of these classes were landlord; most Hindus were businessmen, traders, contractors etc. while the former imbibed the aristocracy of the Muslim rulers, the latter had no prejudices, social or religious, and freely sent their boys for higher education³⁹.

In the 19th century, the rise of Sir Syed Ahmed Khan, himself as an Islamic scholar, encouraged and justified the adoption of western education in Islamic terms. He is credited with being the driving force behind the Aligarh movement for reforms and he founded the Mohammadan Education Conference (MEC), in 1886. A year later he established the Mohammedan Anglo-Oriental College of Aligarh which later gained university status. The Mohammadan Educational Conference held conferences every year which increased the interest and the desire of the Muslim community for higher education. He was able to convince the new generations of Muslims that the pursuit of modern education and the raising of intellectual

standard centres modeled on the Aligarh college. Thus Madrasatul Islam, in Sindh and Dhakah college were set up which later gained University status. Other who made similar attempts to demonstrate Islam's compatibility with western thought and status. Other who made similar attempts to demonstrate Islam's compatibility with western thought and values were Abdul Lateef and Ameer Ali in Calcutta and Taiyabji family in Bombay.⁴⁰

During this period, Urdu was the medium of instruction in traditional institutions. This served as a link to Muslim community in other regions. The language was identified with the Muslim community, even in regions where they in fact used and spoke the local language.

Such identifications made things more difficult for Muslim communities in other region. When the British replaced it with Hindi in Bihar and gave Hindi equal status to Urdu in the United Province and Oudh. In fact all Muslims in other regions adopted a dual approach. They used Urdu as a means of political differentiation from other communities and for practical day-to-day activities preferred to use the local language. Providing instruction in Urdu was thought to be one of the ways to keep the interests of Muslims in education going. The introduction of secular education and the agitation among people in the north for the replacement of Urdu was making it difficult for the language to survive and therefore provide an incentive for Muslim to seek education.⁴¹

In due course however, the educational status of the community marginally as a result of the special efforts by the government and of some enlightened individuals within the community. The government, between 1870-1900 introduced measures to make secular education attractive to Muslims. Some of their measures taken by the government to improve the educational status of Muslims were at the insistence of Muslim leadership, who were more concerned about gaining advantage at higher levels of education to be able to compete with Hindus rather than with the basic problem of education of Muslim masses. The backwardness of the masses was used by the upper class to strengthen their claims for special treatment.⁴²

The movements for educational reform however, left the masses of Muslims untouched by virtue of into appeal to only a limited group of upper class Muslims. A shift from education for the simple pursuit of knowledge and religious purposes to education solely for employment or social mobility required some adjustment. Even the motivation of employment in some places did not exists because of the perceived policy of discrimination the British adopted as far as the employment of Muslims were concerned. This is said to have caused frustration among Muslims and is often cited as a contributory factors to their relatively poor socio-economic of status.

8. HISTORICAL SKETCH ABOUT MUSLIM WOMEN EDUCATION IN INDIA

The woman of today needs more space to expand her ideas. She should be given full freedom in order to nurture and materialize her imagination. She should be given a chance to prove her abilities. History shows if, education is lacking in women she cannot even help herself either socially, or financially, and can she be of any help to the liberated men's world of today. In this chapter researcher broadly classified education of Muslim women during 1857 to 1947 and after independence till the present scenario. To see the impact of educated women during Marriage Negotiations.

(i) Women's Education : 1857 to 1947

While the problems and constraints of education and employment of the youth in the Muslim community received great attention, the education of women was not an issue at all, rather education of male in the community considered as a pre-requisite for female education. Sir Syed in his evidence before the Education Commission of 1882 stated that, "In India, women are almost entirely excluded from education...I am of the opinion that government cannot adopt any practical measure by which respectable Mohammedans may be induced to send their daughters to government school for education....in fact, no satisfactory education can be provided for Mohammedan females until a large number of Mohammedan males receive a sound education".⁴³ This was the males of the community

who enforced these practices and it was thought that unless they were educated there was no hope that women will have any access to educational opportunities.

(ii) Women Education During Medieval India :

Education of girls encountered a whole new and different set of problems, which had to do with conservatism, religious beliefs, social taboos and economic status. In Medieval India, Muslim girls never received education in Khanqhas and Madrassas, and there is no evidence to show that many private houses served as important agencies of higher education to give instructions to the girl privately. Resistance education of women was not restricted to the Muslim community alone. The Fourth Review of Education Committee (1897-1902) cites resistance to women's education by all communities, strict seclusion was practiced both by Hindus and Muslims and formed an obstacle to the inclusion of girls at school beyond a very elementary level.⁴⁴

(iii) Mughal Age:

During the Mughal age, higher education of Muslim women was mostly confined to the upper classes of society⁴⁵. Among the poor, if some got time for education, their education was confined only to the reciting of the Holy Quran. By education a girl was expected to prove a devoted wife, an excellent future mother with expertise in house hold work and, above all punctuality in the religious duties.⁴⁶

The gist is educated women while negotiating anything related to her rights should be aware and take good decisions regarding her welfare. Religious education was encouraged because of the teachings of the Ulema (learned Islamic Scholars). Their teachings were meant to secure a better moral and material life for women and their families. They insisted that women should be able to read and write so that they would know the religious texts, which according to them was important for both worldly and religious welfare.⁴⁷ Maulana Ashraf Ali Thanawi, in his work, *Bihishiti-Zewar*⁴⁸ describe and lists the characteristics of a proper Muslim woman, all of which can be acquired only through proper education. Among these characteristics was that she should be literate in Urdu, because, a good woman revealed herself when she opened her mouth for her language was clear and correct. 'A good woman should also be able to write letters so that she could handle intimate matters without divulging them to intermediaries. These were seen as marks of respectable status. Thanawi, thus conveyed to his readers that education of girls was not only worth while but religiously correct.⁴⁹

Religious education had several constraints. The lessons had to be at home and not outside. The tutor had to be a woman else, the lessons took place with the young girls sitting behind a screen. Sometimes blind tutors were employed to impart religious education to girls so that the strict norms of seclusion were not transcended.⁵⁰ Some families however, would send their daughters out to the neighbourhood Arabic schools. Muslim girls, as claimed by Haji

Ghulam Mohammed Munshi, Honourable Secretary Anjuman-i-Islam in Mumbai, went to indigenous Quran schools, which were on every street corner, and Muslim teachers could be found to teach Urdu and the Quran⁵¹. As an incidental effect girls were allowed to continue in schools, in order to follow up their learning of Arabic. Again the condition under which some girls were sent to schools were rather strict. They were transported in supervision from the four walls of their homes to the four walls of the school. The concerns of the families was that if the girls were seen or exposed to the gaze of outsiders, particularly merit would spell disaster in the sense that it would make their marriage prospects more difficult.

Researcher highlight all these problems here because when woman is not free to take religious and modern education, how can she be able to negotiate freely her marriage contract. So there is need of the hours in future as provided by Quran and by practices of the Prophet (SAW) woman should be free to laid down terms and conditions in her marriage contract. This is possible only when she is having religious and secular education.

In 19th century, there was a group of social reformers who challenged the behaviour of the "uneducated woman", given to customary practices and rituals which were unfamiliar to Islamic teachings. They accepted the educational agenda of the Ulema, but made it at once more European. Syed Murtaza Ali was one such reformer who, with his wife, founded a newspaper for women, and in 1906 again collaborated with his wife in founding a separate school

for girls in Aligarh. Like the Ulema, he has keen to see girls to be educated, but he favoured a more a cosmopolitan approach to education. Some of his associates like novelist Nazir Ahmed tried to persuade his readers that educated women could best perform their domestic and religious duties to the benefit of all.⁵²

There were some families who took the lead in sending their women for higher education. Justice Shah Din in Punjab and Mohammed Shafi were the first Muslims to send their daughters to study at Quran's Mary's college in Lahore⁵³. Among the poorer class, girls were not sent to school as the meagre resources at their disposal were allocated to boy's education since the strong incentive of material gain that had furthered the education of boys did not exist for girls. As the intensity of the educational reforms increased more and more girls were sent to schools for education. According to Roy, this came about after independence and mainly as a result of changes in the attitude of the male members of the family.

Independence did not bring about any changes for the betterment of the Muslim community with political vacuum in the community the party in power immediately after independence, the congress, regarded their traditional allies i.e. Ulema and Orthodox Muslims from Deoband, who had all along supported the congress against the Britisher and later against the League, as the leaders of the Muslim community in India. They struck a political bargain in which the Ulema gave their support to the Congress, on the assumption that Muslim Personal law would be maintained as would

endowments, mosques and other institutions and aspects of Muslim culture.⁴⁵ The apparent liberal and secular approach of the congress under the leadership of Nehru drew in Marxist Muslim politicians as well. However, these were politician who had rejected the separatist politics of the pre-independence years and did not therefore work to protect the interests of the Muslim Community per se. These leaders were born to a system where close association between Muslim leaders and other national leaders was a pre-requisite as well as a result of the National liberation movement. They were nationalist in the true sense of the word for they did not strive to create a special communal constituency.⁵⁵

The new leadership that emerged after the independence was scarcely interested in improving the social and economic conditions of the Muslim community. They readily took up non-issues to demonstrate their strengthened bargain for some gains that improved their electoral and political prospects rather than the conditions of the Muslim masses.⁵⁶ Successive governments too have failed the Muslims. As Singh observed "In tender with self seeking Muslim leadership, they (the state) conceded some shops to Muslims now and then to lull them into complacency but never bothered to take upon themselves to initiate and pursue concrete measures to improve their social and economical conditions."⁵⁷

Before independence the majority of Muslim belonged to the poorest sections of the population, but after 1947 the situation worsened as many of the better educated and more affluent Muslims,

who might have provided community leadership, opted for Pakistan.⁵⁸ The Muslim community in independent India thus started off with a disadvantage of being a religious minority, without any commendable political leadership from within the community and economically weak, they formed the masses who were already on the fringes of Indian society.

Improvements of their socio-economic status in the most urgent need of Muslims today. In a national survey on socio-economic conditions of Muslims in India during 1970-71, it was found that in all categories of formal and technical education, Muslims lagged much behind Non-muslims. The drop-out rate among Muslim students is significantly high and the number of students decline as the levels of education goes on. In 1981, of as had only 3% and IPS only 3.9%, Muslims officers. In the period 1971-81, 3.1% income Tax Officers found only 3.2% of the work force. In Central and State government officers, the percentage of Muslim employees is 3.4 and 6.0 respectively. The public sector is the only sector where percentage wise, employment of Muslims is comparable to their population i.e. 10.8%. The Muslims have also not benefitted from the various governments schemes aimed at improving the lot of the weaker sections of the houses allotted by state government schemes aimed at improving the lot of the weaker sections only 3.9% were allotted to Muslims. Of the licences issued for fair rice shops, only 6.9% were awarded to them and they received only 0.2% of the benefits extended to artisans. Not more than 5% Muslims received loans advanced by

different financial institutions, and here to, higher the amount of loan, the lower the percent of Muslims who get it.⁵⁹

This position of both the traditional organisation and the state has put tremendous constraints in the way of organising Muslims women on the issue of legal rights and practices such as oral talaq, maintenance provisions and importance of nikah-nama etc. The identity crisis about by the communal politics of the country has put a women in a looses situation. The fact that Shah Bano⁶⁰ withdrew her case in court because it may have caused riots is an indication that Muslim women's demands for legal rights comes packaged with the threat of riots. True to their socialisation, women relevant and sacrifice their interests at the alter of the so called larger interests of the community and nation.

Muslim women, it appears have no course to legal remedy for their grievances in society. The community leadership is only too immersed in maintaining and strengthening their patriarchal strangle hold over women. At the same time by making women the primary makers of their communal identity, they are using their shoulders to place the gun to fire at the 'enemy'. The state, by recognising only the conservative elements of the community as leaders, is deliberately glossing over the injustice faced by women in the name of 'respecting minority culture' and identify. The voices from the progressive, secular and intellectual sections of the community are too weak and fragmented to have any impact. The women's movements for a long time has worked on the premise that women have a separate existence

apart from their community identity. Having realised that this is not so, they now have a big way to go in mobilising Muslim women around their rights.

In present scenerio Muslim women need to mobilise themselves and organise around the issue of their rights. The constraint that women faces is their lack of education and awareness in their matters. There is sheer need to shape laws in accordance with women's welfare.

Conclusion :

It was Islam that for the first time, vindicated the right of women and gave them in different Surah's. So better understanding about her rights, there is need to understand these theological sources of Islam. Women as well as men are urged to acquire learning. They were granted all the fundamental rights. They were given the right of inheritance of the property of her father and husband. As regards marriage and divorce, they have got fair liberty but this will only possible when woman has knowledge about her rights. She will be educated not only in the professional education but also in religious education. Islam has removed various domestic and conjugal hardships of the women by prohibiting the unlimited polygamy prevalent in pre-Islamic days. Now it has restricted upto four in these days. In short, Islam has given adequate provisions for preparing the women as equal partners of men. There is no other religion in the world which provide freedom and equality to women so much as in

Islam. It raised her from the lowest status to equality with men.²² But important thing is that women must have been given education and aware with their rights and also our ulema given correct interpretation to women issues in pace with changing time.

9. SELECTION OF THE AREA

Negotiations during marriage contract trigger off a controversy like whether Islam provide right to choice ? (to choose her husband) Whether consent of women is important ? Whether she is having equal rights as men have ? Whether she is aware of their legal rights to seek divorce or not ? Whether she is having knowledge about Muslim Personal laws and content of the Nikahnama ? Such type of thought provoking questions prompted the researcher to conduct a survey through questionnaire in a Aligarh district.

Islamic law in the Indian context generally refers to that part of law which is administered by the courts in respect to personal matters of Muslims. The reception of Islamic law dates back to more than one British Raj in Indian peninsula Islamic law was applicable in public and private affairs in large parts of the country. The British Government took away almost whole of the public and private affairs in large parts of the country leaving only certain parts of Personal law relating to marriage, dower, divorce, maintenance etc. The British courts did not faithfully adheres to the true Islamic precepts even in these areas. Several legislations were introduced by the Britishers to regulate the matters even in the above mentioned areas. However, the

Muslim Personal Law (Shariat) Application Act, XXVI of 1937 provides a protection to the Muslims to be governed by the Shariah law since British period.

A study of judicial decisions of the British time would disclose that through the doctrine of 'equity, justice and good conscience' the judges have implanted their notion of justice and deviated from the true Islamic law. This happened despite the promulgation of the Muffassil Regulations 1772 and in the Regulations of 1780 which under section 27 states :

"That in all suits regarding, the inheritance marriage case and other religious usages and institutions, the laws of Quran with respect to Mohammedans and where only one of the parties shall be Mohammedan the law and the usages of the defendant shall invariably be adhered too...."

The trend set by British judges continued even after independence. With the imagination of the Indian constitution in 1950, some new areas of controversy have cropped up. The foremost is the very existence and the survival of 'Muslim Personal law' which in view of Article 44 is at stake. There has been some recent cases in which the legitimacy of several aspects of Muslim law have been under attack.

The study analyses the impact of education, employment and status of women and their rights under Muslim Personal law governing in India and role of judiciary and their deviation from

Shariah laws. As mentioned Shariat Act, 1937⁶² have been made applicable to Muslims in India. In catena of cases of the Indian judiciary has deviated from the shariah laws and applied their own rights and wrongs.

Muslim Personal Law (Shariat) to Muslims

Sec. 2 : Application of Personal Law to Muslims

"Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agriculture land) regarding interstate succession, special property of females, including personal property inherited or obtained under contract or gift or any provision of Personal law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubara, maintenance, dower, guardianship, gift, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments), the rule of decision in cases where the parties are Muslims shall be the Muslim Personal law (Shariat)...."

The Dissolution of Muslim Marriages Act, 1939⁶³

An act to consolidate and clarify the provisions of Muslims law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to effect of the renunciation of Islam by a married Muslim women on her marriage etc.

The Muslim women (Protection of Rights on Divorce) Act, 1986⁶⁴

Aim of this act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide, for matters connected therewith or incidental thereto.

Section 2. Definition in this Act, unless the context otherwise requires:

- (a) "divorced woman" means Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from her, husband in accordance with Muslim law;
- (b) "Iddat period" means, in the case of a divorced woman,
 - (i) three menstrual courses after the date of divorce, if she is subject to menstruation.
 - (ii) three lunar months after her divorce, if she is not subject to menstruation; and
 - (iii) if she is enceinte at the time of her divorce the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier.
- (c) "Magistrate" means a Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973⁶⁵, (Section 2 of 1974), in the area where the divorced woman resides.

(d) "Prescribed" means prescribed by rules made under this Act.

The Indian Judiciary has been interpreting and applying Muslim Personal law to all disputes governing family matters of Muslims. Moreover, the Muslim community in different parts of the country has also been following traditional and customary laws. These laws yield considerable influence of the Muslim community in India even though perceptions what they stand for and the ways in which they are assimilated by the community are not uniform.

Muslims have their own bodies like the local jamat i.e. panchayat, ulema bodies, non-government Organisations etc., interprets laws and dispense justice in family disputes independent of the authority of the state in future for the better administration of justice.

10. OBJECTIVES OF THE STUDY

- To spread awareness, knowledge and information regarding the women's rights and obligation in marriage contract under the Islamic laws and the existing body of codified and customary laws applied to women.
- To know the attitude of women about Muslim Personal law and awareness about its enforcement.
- To highlight the importance of nikah-nama made by Muslim Personal Law Board.
- To highlight the need of compulsory registration of marriage.

- To find out the law in Shariah and in its application in actual practice. This gap fill by the non governmental organization's, ulema, Muslim personal law board and other organisations from time to time.
- To find out in cases vast differences in the interpretation of customary laws across the country by Indian judiciary.
- To disclose existing laws which are beneficial to women.
- To identify strategies used in the part to establish egalitarian, gender just laws for Muslim women in future.
- To provide information to lawyers, activists, theologians, social workers etc. to understand and counter legal or social arguments that are masqueraded as religious but are in fact anti-women.
- To emphasize the importance of consent doctrine when women negotiating the marriage contract.
- To examine the importance of her right to choice and post marriage hazards when parents forfeit her right
- To show the awareness among Muslim women for the enforcement of Muslim Personal Matrimonial Code in future.

11. HYPOTHESES

In order to achieve aforementioned objectives of the study, the following hypotheses were formulated.

- women is not aware with their legal rights while negotiating in marriage contract due to lack of religious and formal education.
- To overcome post marriage hazards there should be compulsory registration of marriage with stipulated conditions.
- Avoid frequency of divorce in future there should be written conditions in nikha-nama.
- There should be reform in Muslim Personal law and must have taken into consideration women issues such as, maintenances, mahr, divorce etc.
- There is wide gap between theory and practice because there is no proper legal interpretation of the Islamic text by other faith jurists.
- There is need to establish Muslim Personal Matrimonial Code and justice must be administered by Mujtahid or Ulema.
- Remove conservative attitude of the parents during Muslim marriages.
- To increase representation of Muslim women in Muslim personal law board.

To achieve the objectives of such an ambitious study, multiple research methods and techniques were employed including a broad survey of women such as teachers, social workers, lawyers, home based workers, office employees, house-wives, teachers, in-depth interview relating to concept of marriage, through opinionaire

opinions were taken by some intellectuals for the scrutiny of important issues. The present study however mainly depend on field research/feministic research that focussed on social, economical, educational and legal status of Muslim women particularly. However, while designing the research methodology, it has realised that little factual information was available on the socio-economic, educational status of women across the Aligarh district is important. Since the study provided space and scope for expansion in future. The survey aimed to providing quantitative data on education of women and their families their engagements in economic activities, their role in religious practices, their marital status and related issues, terms and conditions of the marriage contract and their view on the application of Muslim Personal law exclusively and some general questions to sum up this study. Through interview, views regarding the marriage and reform under laws has been taken from intellectual women, district qazi, ulema, jamat personnels and maulvies etc.

12. RESEARCH METHODOLOGY

Since the geographical scope of the study was vast, certain methodological and logical issues from such and such areas to be covered, the basis of the choice of content and form of research, the methodological and procedural design of the study and treatment of the data. In this chapter, a description of the sample, tools and techniques adopted for the study has been presented.

(i) The Sample :

The primary purpose of conducting the research is to discover principles that have universal application. To survey and

study the whole population in order to arrive at generalization would be impracticable, if not impossible. Fortunately, the process of sampling makes it possible to draw valid inferences and generalization on the basis of careful observation of variables within a relatively small proportion of population. "A sample is a small proportion and analysis".⁶⁶

By observing the characteristics of the sample, one can make certain inferences about the characteristics of the population from which it is drawn. A sample, thus, is a miniature population to be true, sample must be representative and adequate. The ideal sample should be large enough to serve as an adequate representative of the population about which the researcher wishes to generalize, and small enough to be selected economically, in terms of subject availability⁶⁷, expense in both time and money, and complexity of the data analysis.

The sample investigated consisted of 500 women from the entire Aligarh district. Prior to detailed investigation of lists of schools teachers, colleges lecturer, residential people office employees, factories workers etc. was taken into consideration through randomly from which every 3rd, 5th, 7th person from particular sample taken for this investigation.

1. Teachers
2. Lawyers
3. Office employees
4. House-wives
5. Home-based workers

All the above mentioned categories of sample through random sampling has been taken from different parts of the Aligarh district. Indepth interviews has been taken by ulema for the further changes regarding in marriage law and its implementation to finally wind up this study.

(ii) Research Method :

Research method is defined by Good, is : "An instructional procedure, the designed outcomes of which are achieved by setting up situations in such a form that the student gather and organize information draws his own conclusion are the basis of data.

There are several methods which are used in research, they are as follows :

1. Historical method of research
2. Experimentation method of research
3. Descriptive method of research
4. Sample survey method of research which is researcher taken into consideration in this study.⁶⁸

The survey may be defined as follows :

"It involves a clearly defined problem and definite objectives. It requires expert and imaginative planning, careful analysis and interpretation of the data gathered, and logical and skilful reporting of the findings.⁶⁹

This methods is concerned with the study of existing conditions, facts, attitudes and opinions. In this method several kinds

of information may be collected within a limited time. The description and interpretation of data gives the desired results.

13. TOOLS OF THE STUDY

For the purpose of this study the following tools were considered :

1. Questionnaire
2. Opinionnaire
3. Interviews

The Questionnaire : The part of the survey questionnaire of which findings are presented in this volume is attached as Annexure to this study. An explanation of the rationale of the questions and the various close-ended options provided are however in order. As questionnaire is the most appropriate and useful device for gathering data related to the specific aspects of the problem. Information which is not readily available at an office or in urgency and has to be collected from individuals or groups of individual is collected through a questionnaire. Questionnaire is a set of questions prepared to include all those areas or aspects which have their influence or relation with the problem under consideration. A questionnaire is somewhat similar to an object test. A questionnaire may contain questions from different areas. It may have several sets or sections designed for different groups and or individuals. It may contain question from different areas. Thus, it has unique advantages. Properly constructed, administrated and tabulated, questionnaire may prove to be most

appropriate and useful data gathering device for a research project. The efficacy and usefulness of a questionnaire is brought out by the following quotations :

"The questionnaire are used to get the factual information, interest, attitudes, opinions and judgement. Opinions may be treated as facts, in the sense that their existence may be factually established".

Qualities of good questionnaire :

1. Questionnaire should be of general and public interest.
2. The language used should be simple and easy so that respondents of an average ability can read and understand.
3. Questionnaire should be easily worded.
4. It should be short and brief so that it may be easily filled out by the respondents.
5. Unnecessary questions should be avoided to save time and money and to maintain the interest of the respondents.
6. The questions should not be ambiguous, their meaning should be absolutely clear to the respondents as well as to the researcher.
7. Sufficient choices should be provided in the responses of the questionnaire. Good variety of responses reduces the need of opinionnaires.
8. The respondents should be asked only to tick-mark the answers.

The questions should not be "fill in the blanks" type. Tick mark type questions reduces the labour and save the time of respondents.⁷⁰

In order to get the desired information the researcher developed his own tools for the present research. The questionnaires were used as the main tools of data collection. In spite of the demerits of questionnaires the researcher prepared the questionnaire because of the following reasons :

1. Standardized questionnaire for the purpose of the proposed study were not available.
2. Present study is concerned to find out the problems faces by Muslim women while negotiating the marriage contract. Therefore, specific informations regarding a particular place as well as about a particular groups of individuals can only be collected if separate questionnaire are used, considering the aims and objectives of this problem. Mode of living, socio-economic, and educational background of the people are different from place to place. Thus, keeping in view all these factors in mind, the researcher has developed his own questionnaire which is best possible attempt to collect data, list the findings, interpret them and draw conclusions to wind up this study.

14. DESCRIPTION ABOUT CONTENTS OF QUESTIONNAIRE SCHEDULE :

The questions in the present questionnaire are prepared according to the aims and objectives of the problem. The proposed questionnaire contains closed form of question and open form of questions closed form means the several replies of a question are given and the respondent is bound to select only one reply i.e. multiple choice questions. This method is economical in terms of time money and efforts. In open form of questions, respondent is free to express his views and ideas so we can say in this study researcher used mixed form of questionnaire which consists of both closed and open type questions. For social and legal research this method is important and effective.

The part of the survey questionnaire of which findings are present in this volume is attached as Annexure. An explanation of the rationale of the questions and the various close and open ended options provided are however in order. This questionnaire divided into nine parts. The objective of the question on type of education was to assess the kind of education women have access to. Formal meant enrolment in formal educational institutions. Informal included other forms of education like adult literacy programmes, tuition at home, informal attempts in neighbourhood to educate members of community and so on. Religious study implied teaching of religious text in religious institutions. These not only included formal institutions of learning for Islamic scholars but even the

neighbourhood madrassas and maktabas teaching primarily religious matters among other things or lessons at home to read the Quran and other religious books. Self study meant, where women took the initiative to educate themselves whenever they had access to the educational material. The question on level of education provided information on the present educational status of Muslim women. Some of the options were included in order to cross examine responses in the earlier or following questions to get a near accurate estimate of women with formal education, literacy or illiteracy. For example, the category of illiterate was one such option. One can argue that illiteracy is not an educational level. However, it was useful to cross check the response to the earlier questions on access to education. The other options are self-explanatory. However since the perceptions of what is primary or secondary education differs in different parts of the country, special criteria for what is primary and secondary were created to avoid confusion. By recognising and including other forms of education like informal, religious etc. One cannot gauge whether these forms of education enabled women's literacy. These questions of this section resolve this problem. They gave an accurate estimate of literacy and illiteracy among Muslim women. Another important objective of seeking this information was to build a mailing list of Muslim women across the entire district with information on which language they read. The objective was to translate the findings into as many languages as necessary and disseminate the information and future reports and publications concerning Muslim women.

The questions of education of the family in part II allowed for the contextualisation of women's education within her family when compared to her response in the earlier section. Secondly, it helped in assessing the general trend in education were increasing.

In the options on employment status is part III, housewife meant a woman not engaged in any income generating activity Home based worker meant woman who were contracted to do jobs at home on piece rate wages. Self employed meant women engaged in activities like teaching children informally (tuition), vending, tailoring, bidi making in home etc. Service meant all forms of formal employment outside the home. For example, work in factory, office, domestic labour etc. in the primary level i.e. agriculture sector, secondary level, i.e. industry or tertiary level i.e. service sector. Business including activities like independently running grocery shops or beauty parlours or working in a family business with a fixed share in the profits.

The questions on religious practice in part IV were based on the common understanding of what it takes to be a Muslim i.e. praying, fasting, reading Quran etc. while these are not indicator of how religious a person is, it does suggest the extent to which women hold these practices. The questions are the language in which the Quran is read if it was understood was specifically aimed at knowing the language in which yields the best result.

The questions in part V looked at the impact of negotiations before marriage. These questions responses show how much freedom

parents provide to their daughters during negotiations, as Islam provide full freedom to choose their partners. Here these questions touches the right to choice concept as provided in Islam and practices in the Muslim community.

Part VI is very important and it highlight the importance of Nikah Nama, its contents and how much people are aware with this? This part contains various questions relating to registration of marriage, reforms under standard nikah-nama etc., and the present practices also.

The questions in part VII firstly contains choice, meaning and its implementation while negotiating in marriage contract. The consent of girl is very important for marriage contract and so this part also highlights the importance of consent and its affect.

Part VIII of this questionnaire devoted to role of Muslim Personal Law Board and altitude of Indian Judiciary while propounding any principle relating to marriage contract.

Last part of this questionnaire i.e. IX, contains general question through which we assess the overall freedom of Muslim women in all the issues pertaining to her status. Besides this questionnaire, two interview schedule questionnaire is also prepared by researcher. The aim of first questionnaire to get full information regarding some sensitive issues form women intellectuals and social workers. The aim of second questionnaire is to take indepth interviews from ulema, qazi jamat personnels and moulvies etc. These

interviews schedule is important as to get relevant information for the conflicting issue like talaq, mahr, compulsory registration of marriage, maintenance, consent of girl etc. in details.

The survey sheets were sent to all respondents and when they completed and sent back, data entry was done simultaneously. Data was entered into a computer package specially designed for data entry of survey parts. Internal checks and validations were built in so, as to avoid data entry errors to the extent possible. The data was further processed using statistical package for social studies.

The entire district data analysis has been presented through percentage method. The figures as shown in Miscellaneous form, in the tables are the sum total of responses like not applicable, not sure, not filled, don't know, no comment where these percentage are negligible. However, wherever above mentioned responses are important, these figures have been retained for the accuracy of the survey data.

15. INTERVIEW SCHEDULE :

In this part of the study specific set of questions to some intellectual women, social workers, Islamic scholars, qazi etc. are given. And their views sum up in this part of the study.

16. LIMITATION OF THE SCOPE OF THE SURVEY AND STUDY

The scope of the survey and study was limited to providing a bird's eye view of the status of views of Muslim women on the

issues outlined above. The study did not deal into indepth explanations as to the reasons for the same. Despite, these limitations, the survey of this study remains a pioneer work because as no work is done on this topic before this and it adds new information to the existing position of women.

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Chapter - II

CONCEPT OF MARRIAGE UNDER ISLAM

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CHAPTER - II

CONCEPT OF MARRIAGE UNDER ISLAM

Introduction :

Marriage is an institution which legalizes the sexual relations between man and woman so as to preserve the human species, the growth of descent, promotion of love and union between the parties and the mutual help to earn livelihood¹. It is allowed between two persons of different sex to whose mutual cohabitation there is no natural or legal bar or prohibition. Marriage, whether considered as a sacrament or as a contract, apart from giving rise to certain mutual rights and obligations, confers the status of husband and wife on the parties, and of legitimacy on the children of marriage.² The most remarkable feature of Muslim jurisprudence is that the Muslims considered marriage a civil contract even at the beginning of the development of their juristic thought but to the extent in which the Hindus and Christians call their marriage as sacrament, a permanent union, the Muslim marriage too may be called an ibadat (devotional act)³. The Muslim conception of marriage differs from the Hindu conception according to which marriage is not a mere civil contract but a sacrament. According to Fitzgerald, marriage is emphatically not a sacrament although a religious duty. There are no sacrament in Islam, not is it a coverture⁴. Sachact observed "Marriage (Nikah; Zawi, the husband; zawafa, the wife) is a contract of civil law, and it shows trace of having developed out of the purchase of the birde; the bridegroom concludes the contract with

the legal guardian (wali) of the bride, and he undertakes to pay the nuptial gift (mahr sadak) or dower not to the wali as was customary in the pre-Islamic period, but to the wife herself.⁵ Wilson defines Muslim Marriage as "a contract for the purpose of legalizing sexual intercourse and the procreation of children."⁶ Krishna Iyer, J., concurs with the view by observing "The impression that a Muslim marriage is mere contract and not, therefore sufficiently solemn or sacred, is a another fallacy of the Hindu and western thought."⁷

1. MARRIAGE

The exclusiveness of the Muslim marriage and divorce rules has made an interesting topic for discussions among legal luminaries and among the social scientists. Some of the characteristics of Muslim marriage are unlike those of the Hindu Marriage. A Muslim marriage or Nikah as it is called in Arabic, has fixed and rigid rules which had been laid down by the Prophet (SAW). In spite of Prophet's (SAW) preaching of equality, selection of spouse is restricted within one's religious sects, the Sunnis and Shias.

At present there is problem among Muslims, parents due to conservative nature not taking consent of the girl while fixing her marriage. Though Quran and hadith provide her to choose her husband according to her own wishes. Where the consent of the girl is lacking and where she has been waived her right and parents forcefully caused greater amount of misery and hardship to the party concerned and this reflects a sordid impression of the Islamic legal system on the society at large. In this chapter such type of problems

prompted researcher to undertake the study of relevant Quranic provisions and hadith to know about the true nature of Muslim Marriage.

Marriage is the foundation of social life as it is the effective cause of the human family and social relationship. Mutual consent is the foundation stone of the marriage relationship.

A. Meaning and Definitions of the term Marriage

The etymological meaning of the term Marriage⁸. According to dictionary of Islam is as:

"The celebration of the marriage contract (Urs), Persian (Shadi), marriage is enjoined upon every Muslim, and celibacy is frequently condemned by Mohammed and "Nikah" is defined as :

"A word which, in its literal sense signifies conjunctions, but which is in the language of law implies the marriage contract"⁹.

Other definitions :

According to Tayyab Ji :

"Marriage brings about a relation based on and arising from a permanent contract for intercourse and procreation of children, between a man and woman, those are after being married, become husband and wife".¹⁰

Dr. Jung is of opinion that :

"Marriage though essentially a contract is also a devotional act; its object are right of enjoyment and procreation of children and

regulation of social life in the interest of society.¹¹

Similary in view of Abdur Rahim:

"The Mohammadan jurists regard the institution of marriage as partaking both of the nature of ibadat or devotional act and in Muamalat or dealings among men".¹²

Essentials of Marriage :

1. Offer (Ijab) and acceptance (Qubul)
2. Competent parties
3. No legal disability

According to Muslim law, it is absolutely necessary that man or someone on his behalf and the woman or someone on her behalf should agree in the marriage at one meeting and the agreement should be witnessed by two adult witnesses. As women is in pardah, it is customary to sent a relation of the woman to her inside the house accompanied by two witnesses. The relation asks the girl within the hearing of the witnesses whether she authorizes him to agree to the marriage on her behalf for the dower money offered by the husband. If she says yes or signifies her assent or expresses consent by some other method, then this matter goes to Qazi and Qazi reads some portion of the Quran and in his way marriage is completed.¹³ The courts in India while discussing the nature of Muslim marriage have highlighted legal and religious aspects also. If we look on aspects of marriage, briefly, marriage under Islam is not only a social need it also covers the other aspects e.g. legal and religious. The Quran and Hadith have been accepted as the basis of religion and law. Islami

law lays down the principles of belief, act of worship as basic tenets of Islamic mission, family organization and transactions. Juristically, under Islamic law marriage is purely a contract. For the validity of Muslim marriage under Islamic law depends upon two conditions; firstly, on the capacity of the parties to marry each other and secondly, on the celebration of marriage according to form prescribed in the places where the marriage is celebrated, or which are recognised as legal by the customary law of Mussallmans.

(a) Legal Aspect :

Juristically speaking marriage is a contract and not a sacrament. The judgement given by justice Mahmood, the first Indian judge of the Allahabad High Court in *Abdul Kadir Vs. Salima*¹⁴, is one of those classic pronouncements which has acquired so great reputation that even its obiter dicta carries the legal sanctity of ratio-decidenti.

Two divergent opinions come out of those two decisions regarding this issue. The first one regards a Muslim marriage as purely a civil contract and not a sacrament, while the later one considers the marriage in Muslim law, as not only a civil contract but also as a religious sacrament. To examine the reasonableness of these two observations, vis-a-vis the real nature of marriage among Muslims, we will discuss here the nature of marriage as a whole.¹⁵

(i) The central idea in the family law of the Muslims is the institution of nikah or marriage. It was made possible only, by the strict enforcement by Islam, the institution of marriage in social life

that the tribal system was effectively changed into the family system.¹⁶

The development of the institution of marriage is a matter of historical interest. It seems to have originated in the form of irregular unions and marital conjunctions. Marriage by capture was the ancient form of securing a wife, ultimately it gave way to the elopement with consent sort of a compromise with the real capture. The institution of marriage by purchase gradually grew up, and thus the notion of acquisition of a wife as property, paved the way for marriage by consent, subject to dower.

That is why Dr. Jung has observed that several authors of Anglo-Muhammadan Law, apparently under the influence of the modern conception of marriage, or perhaps by reason of singular characteristic of the Muslim Matrimonial law, have defined it simply as a civil contract.¹⁷

As Justice Mahmood in Abdul Qadir's¹⁸ case adopted the opinion of S.C. Sarkar in Tagore Law Lectures (1873) and quoted as follows :

"Marriage among Muhammadans is not a sacrament but purely a civil contract, and though it is solemnised generally with recitation of certain verses from the Koran, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion".¹⁸

Mahmood J., supports his view from the text of Kanz, the Kifayah and Inayah which says that marriage is a contract which has for its object the right of enjoyment or procreation of children. But

it was also instituted for the solace of life and is one of the prime or original necessities of man.... The pillars of marriage, as of other contracts are Eejab-o-Kubool or offer and acceptance.¹⁹ Apart from this, the learned Judge does not put forward any argument in favour of marriage as civil contract. In short, his lordship places his reliance solely on element of the offer and acceptance.²⁰

Fyzee observed: "considered juristically, Marriage (Nikah) in Islam is a contract and not a sacrament". Qua-contract, it has three characteristics:

- (i) there can be no marriage without consent;
- (ii) as in a contract, provision is made for its breach, to wit, the various kinds of dissolution by act of parties or by operation of law;
- (iii) the terms of a marriage contract are within legal limits capable of being altered to suit individual cases.

This statement is sometimes so stressed, however, that the real nature of marriage is observed and it is overlooked that it has other important aspects as well.²¹

As Sulaiman C.J., while reviewing the case of Abdul Qadir's in Anis Begam's case observed :

"It may not be out of place to mention that Maulvi Samiullah collected some authorities showing that marriage is not regarded as a mere civil contract but as a religious sacrament."

Though the learned Chief Justice does not himself say that marriage is a sacrament, but from the context in which he said, it is clear that he supported the view of Maulvi Samiullah, District Judge, Rae Bareilly. It is difficult to ascertain that view because neither Sulaiman C.J., supports it through arguments nor the opinion of Maulvi Samiullah in his decision of 1891, is available.²²

It is not disputed that marriage is a contract and to this extent Mahmood J. is correct. The only subject of dispute is whether marriage is purely a civil contract or a sacrament also.²³ Sacrament in this context means "holy order", 'sacred obligation' 'matrimony and extreme action' and 'solemn oaths'²⁴, a modest attempt shall be made to examine the true nature of marriage.

In order to understand the real nature of marriage among Muslims, we will have to consider its aims and objects. Besides this, we must also examine as to what are the injunctions of the Quran, the Sunnah of the Prophet of Islam and his preachings in this respect.

The Muslim Law has ordained the institution of marriage sanctioning thereby sexual relations between two members of the opposite sexes with a view to the preservation of the human species, the fixation of descent, restraining men from debouchery, the encouragement of chastity, promotion of love, affection and union between the husband and wife and of mutual help in earning livelihood.²⁵ It aims at perfecting one's desires and sexual urges in a healthy way.

(b) Religious Aspects

Seen from the religious angle, Muslim marriage is an ibadaat (devotional act). The Prophet (SAW) is reported to have said that it is essential for every physically fit Muslim to enter into marriage, the only condition being that he should be capable to afford it. And the well known saying attributed to the prophet, "there is no mockery in Islam" express his attitude towards celibacy briefly but adequately²⁶. Marriage is an institution which leads to the upliftment of man and is a means for continuance of the human race. Spouses are strictly enjoined to honour and love each other²⁷. It is also reported by some of the writers that Prophet (SAW) has said that marriage is equal to jihad (Holy-war), it is sinful not to contract a marriage, it is Sunnah, and it is obligatory on those who are physically fit provided if they can afford it.²⁸ Moreover, the following traditions may also be taken into consideration.

There are three persons whom the Almighty himself has undertaken to help. First, he who seeks his freedom; second, he who marries with a view to secure his chastity, and third, he who fights in the cause of God.²⁹ He who marries, complete half of his religion, it is now rests with him to complete the other half by leading a virtuous life in constant fear of God.³⁰

Whosoever marries a woman in order that he may retain his eyes God puteth a blessedness in her for him, and in him for her.³¹

Now, if marriage is nothing but a civil contract, then keeping in view the above tradition he would have said that the one who

enters into a civil contract complete half of his religion, the Almighty himself undertaking to help the person who enters into a civil contract. Civil contract is equal to jihad; it is obligatory on every physically fit Muslim to enter into civil contract, and so on. All the inferences are potent absurdities, and were untenable, which means Muslim marriage is something more than a civil contract.³²

Seen in this context, Muslim marriage ceases to look purely as a civil contract or as a means only to procreate children³³. Ameer Ali, has commented that marriage is for the protection of society and in order that human beings may guard themselves from foulness and unchastity.³⁴

In order to achieve these aims and objects, the Holy Prophet of Islam says: "Nikah is my Sunna" (tradition). He directed, faithfully and to contract marriages in mosques³⁵ and propagate with others to the same effect, in order to enhance and maintain its sanctity as the mosques are the most sacred places before the Prophet (SAW) of God. The Holy Quran uses the word "sacred covenant" for marriage.³⁶

The traditions of the Prophet (SAW) follows the Quranic injunction, who was determined to raise the status of woman. He asked people to see their brides before marrying them, and taught that nobility of character is the best reason for marrying a woman. The Prophet (SAW) says :

"O assembly of youths: whoever among you is able to have, he should marry for it is a restraint to the looks and he who is not able-let him keep fast".³⁷

He also said that when a man marries truly, he perfects half of his religion and that "there is no act of worship except marriage and faith, which has continued from the days of Adam and which will continue in paradise as well."³⁸

Any person who does not marry for fasting, praying and keeping himself awake in the night has been scolded by the Prophet thus :

"I keep fast and break it; I pray and I sleep and I am married; so whoever inclines to any other way than my Sunnaj, he is not of me".³⁹

This is because marriage elevates the moral and spiritual standard of man. "Nikah is my precept". Those of you who are unmarried are the unworthy amongst you and those who die unmarried are the most unworthy of the dead.⁴⁰

In Quran and hadith, spouses are strictly enjoined to love and honour each other. Enjoyment and showering love and affection by each has been called as a noble act (Kare Sawab). Traditions of the Holy Prophet (SAW) follow strictly the above lines and are an example for others.⁴¹

Muhammad Ali says that the contract of marriage is sanctified by a sermon before the parties announce their acceptance. He says:

"The Khutbah or sermon at marriage helps the publicity of the marriage and serves the double purpose of sanctifying the

marriage contract and informing the parties of their responsibilities".⁴²

By a reading of hadith, it is evident that faithful are exhorted to be duty bound and truthful as God is omniscient, omnipotent and omniverent. This creates a sort of feeling in true Muslims to observe the sacred marriage tie in its spirit and essence and not to make a mockery of it.

Prophet (SAW) has also recommended the prayer to God, for divine blessings at the first meeting of husband and wife.⁴³

Thus, the Muslim jurists, therefore, regard the institution of marriage as partaking both of the nature of ibadat or devotional acts and muamalat or dealings among men.⁴⁴ It is founded on a civil contract but it is also a sacred covenant.

(c) Social Aspect :

Further, in its social aspect, marriage reminds three important factors:

- (i) Islamic law gives to the woman definitely a high social status after marriage.
- (ii) Restrictions are placed upon the unlimited polygamy of pre-Islamic times.
- (iii) The Prophet (SAW), both by example and precept encouraged the status of marriage.

Thus, in the light of above discussion the view taken by Justice Mahmood in Abdul Qadir's case seems to be inappropriate and

the opinion of Sulaiman C.J. is justified⁴⁵ because, to submit respectfully, in the words of a learned author "Marriage in Islam is not merely a civil contract devoid of all religious and spiritual values. Along with its secular aspects (muamalat) it also partakes of the elements of a sacred union of two souls meant for spiritual ends (ibadat)".⁴⁶

(d) Ordinary Contract vis-a-vis Marriage Contract

In respect of the nature of liability to pay-dower debt, Sulaiman C.J., differs from Mahmood J., who had applied analogy of marriage as civil contract with contract of sale of goods and the right of the wife to refuse restoration of conjugal rights with the right of lien and stoppage in transit of an unpaid seller. As Mahmood J. observed:

"Her right to resist her husband so long as the dower remains unpaid is analogous to the lien of a vendor upon the sold goods, while they remain in his possession and so long as the price or any part of it is unpaid, and her surrender to her husband resembles the delivery of the goods to the vendee.⁴⁷ The same is the principle, upon which in the law of sale, the right of stoppage in transit is based.⁴⁸

Being provoked by such analogy Sulaiman C.J. remarked that "marriage can not be regarded as purely a sale of the person by the wife in consideration for the payment of the dower and even if such grotesque to analogy were to be carried to its fullest extent, it would not necessarily result in support of the observation made in Abdul Qadir's case".⁴⁹

Now the question is whether, Mahmood J. compared the contract of marriage resembling with sale of goods in every respect or only to the right of lien, and stoppage in-transit of an unpaid seller. If he confined his analogy of marriage contract only to the right of unpaid seller of goods the following consequences will follow :

- (1) The contract of sale of goods may be cancelled by an unpaid seller. He may resell the goods by rescinding such contract; whereas, in a contract of marriage, the wife is not entitled to divorce her husband and or to remaining with a third person, if a part of her dower remains unpaid.
- (2) The right as to stoppage of goods in transit is exercised only when the goods have parted the possession of the seller and they are in the possession of a carrier or other bailee for the purpose of transmission to the buyer. This right accrues to the unpaid seller only when the goods have parted his possession, but have not yet reached the buyer, and in the meanwhile, before receiving them, he becomes insolvent. By no stretch of imagination, this analogy can be applied to a lady who refuses to restore the conjugal rights of her husband, till her-prompt dower is paid. Further, in this case, there is no delivery to a carrier or other bailee.
- (3) If we apply the analogy of lien, then it revives when possession is regained. Hence, after the wife left the house of her husband, she could demand payment of her dower.

Again, if part of the goods have been delivered and part of it is still retained, the lien on the part retained continues. It may, therefore, be well argued that if the wife after the consummation returns to her own house she can still resist restitution of conjugal rights so long as her dower is not paid, because her right has been revived after the cohabitation ceased. It may also be pointed out that prompt dower does not become payable unless a demand is made. Prompt dower is payable on demand. It follows that no demand might have been made, and in most cases it is not made before the consummation of marriage. The consent of the wife before her dower became due should logically not destroy her right to recover her dower after it has become due, though previous to it consummation has taken place. She should have the right to insist upon its payment before further cohabitation.⁵⁰

- (4) Justice Mahmood said that once consummation has taken place, her right to refuse cohabitation is gone, because it amounts to delivery or transfer of possession by the wife to her husband. The author of *Raddul Mukhtar*, where differentiating between contract of marriage and sale of goods, says that the fundamental difference between both is that in the former there are a series of transfer of possessions, as sexual enjoyment is a life long affair; whereas in the latter one transfer of possession is sufficient.⁵¹ Here also Mahmood justice analogy of lien falls short of argument.⁵²

Now if Mahmood J., stretched the analogy of marriage contract to the ordinary contract of sale the following consequences, apart from the above, will follow :

(5) There are buyers and sellers in a contract of sale and the subject matter of sale are goods; whereas, in a contract of marriage, the wife herself is to receive dower and not her parents. this notion brings nearer the fact that a women is treated as a chattel.

In pre-Islamic era, a woman was treated as a mere chattel. The dower was treated as a price for the bride and she was an object of inheritance, after the death of her husband. But, the Prophet of Islam reformed the society and conferred a higher status to ladies than any other religion.⁵³

(6) The analogy leads to the conclusion that dower is a consideration for marriage which is incorrect and contradicts the statement of Mahmood J., himself.⁵⁴ The various authorities are unanimous on the point that dower is a mark of respect for the wife.⁵⁵

(7) Further, in ordinary contracts all the material terms and conditions are specified and defined by the parties themselves and are not left to the implications and presumptions, while in the marriage contracts of minors or lunatics, such conditions are implied, and the guardians can validly contract marriage for their wards - but the ordinary contracts would be invalid in such cases.⁵⁶

(8) Furthermore, Muslim marriage is not merely a civil contract because

- (a) Unlike civil contracts, it can not be made contingent on a future event; and
- (b) Unlike civil contracts, it can not be for a limited time,-(Muta marriage is an exception and not a general rule.)⁵⁷

The reason under Sunni law is that, if marriage were allowed for a limited period of time, it would fail to fulfil most of its essential purposes.⁵⁸

As a result of the above detailed study it can justifiably be concluded that marriage in Muslim law is something more than a mere civil contract. And the fallacy of the observations of Mahmood J. Can be avoided by relying on the propositions of Sir Shah Sulaiman C.J., which seems to be based on socio-religious considerations.

(B) EFFECTS OF A VALID MARRIAGE

Now the legal effects of marriage, come into operation as soon as the contract of marriage is completed by proposal and acceptance; their initiation is simultaneous and there is no authority in the Muslim law for the proposition that any or all of them are dependent upon any condition precedent as to the payment of dower by the husband to the wife.⁵⁹

Adopting Baillie's phrasology as far as possible Justice Mahmood translated the original text of the Fatawa-a-Alamgiri as follows :

The legal effects of marriage are that it legalizes the enjoyment of either of them (husband and wife) with the other in the

manner which in this matter is permitted by law; and it subjects the wife to the power of restraint, i.e., she becomes prohibited from going out and appearing in public, it renders her dower, maintenance, obligatory on him; and establishes on both sides the prohibitions of affinity and the rights of inheritance, and the obligatoriness of equality between the wives and their rights, and on it imposes submission to him when summoned to the court; and confers on him the power of correction when she is disobedient or rebellious, and enjoins upon him associating familiarly with her with kindness and courtesy. It renders unlawful the conjunction of two sisters (as wives) and on those who fall under the same category.⁶⁰

All these legal effects can not flow from an ordinary civil contract, as they have been put forward and showed by Sir Sulaiman C.J. in abundantly clear way which we will discuss in the chapter of judicial interpretation.⁶¹

Now, for the sake of convenience and brevity the legal effects of a valid marriage are summarised under the following heads:

(C) MUTUAL RIGHTS AND OBLIGATIONS

- (i) The parties become entitled to inherit from each other;
- (ii) Prohibited degrees of relationship are created between the parties;
- (iii) Sexual intercourse and the procreation of children is legalised;
- (iv) All conditions (whether made before or at the time or after the marriage) would be binding on the parties provided that they are

not opposed to any law for the time being in force, or to public policy or the policy of the Muslim Law.

(D) Rights of the Husband and the Duties of the Wife

- (i) The wife is bound to observe strict conjugal fidelity from the time of marriage;
- (ii) The wife is bound, to admit the husband to sexual intercourse at reasonable times and places, regard being had to her health and decency;
- (iii) The wife is bound to observe the iddat of death or divorce;
- (iv) The wife is bound to obey all reasonable commands of her husband;
- (v) Except for some reasonable cause the wife is bound to reside with the husband and to follow him wherever he desires to go.
- (vi) The husband may place a reasonable control over the movement of the wife.

(E) Rights of the Wife and the Duties of the Husband

- (i) The wife becomes entitled to get her dower as the law provides.
- (ii) She becomes entitled to receive maintenance from her husband.
- (iii) She becomes entitled to the use of an apartment for her own and her husband's exclusive use.
- (iv) She is entitled to visit and be visited by natural parents once on every Friday and by her blood relations within the prohibited degrees at least once a year and her parents and children from a former husband with reasonable frequency.

- (v) She becomes entitled to receive an equal treatment and an equal share of the husband's society with any other wife or wives.
- (vi) She is entitled to obtain dissolution of the marriage if the law or the specific stipulation authorises her to this effect.⁶²

A woman does not change her status on marriage. She remains subject to her own pre-marital school of law. Neither the husband and nor the wife acquires any interest in the property of the other by reason of marriage.⁶³

The birth of a daughter in a muslim family is welcomed mainly because the religious texts says that unless a man begets a daughter he can never attain paradise. Besides, the girls are never a liability and right from their birth Marriage negotiations commence. It is common believe in Muslim families that girl was expected to be shy and coy and do not speak regarding her marriage matters.

(F) Betrothel at the time of birth

Betrothel at the time of birth generally a concept of joint families, where elders, usually the grand-parents, take the decision for new born and betroth of their grand-children. The optimum age of these type of engagement lies between 12 to 20 years. In such cases new born baby is not in a position to give her consent or anything else and so fate of such marriage are divorce. Because at the time the girl grew up, she became more accomplished as compared to her finance or else, the young man developed habits which lowered him in the estimation of his future-in-laws. The prospective in-laws assert a lot of authority on their potential daughter in law since they take it

for granted that the girl will ultimately come into their families. The most common fields in which the in laws had much say, are education and purdah and in many families disagreements between parents and in laws about the girl education and pardah practices led to the dissolution of the engagement in initial stage and if married, dissolution of marriage in later stage.

Parents pay why do not any heed towards the right to choose her spouse by the girl herself and her consent being so vital? They ignore the teaching of Islam and saying of the Prophet (SAW). When Islam provide right to choice then why do parents curtail this right?

If we want to abolish these post marriage hazards, we should keep pace with the Islamic teachings. Parents sould respect her daughters choice.

Every religious group in India has provided the ceremonies and essential requirement of marriage. There is no uniformity regarding marriage laws in India, but in every marriage the consent of the parties is an essential requirement of marriage, whether the parties to marriage be minors or adults. In the present study while negotiating in the marriage contract there is need to check the validity and importance of consent under Islam as well as discussion of some important cases. Dealing with the term 'consent' the following questions may crop up :

1. Whether the consent of the girl is necessary?
2. Whether the consent of the girl has any efect in marriage?

3. In case of minor's marriage, whether the consent of the guardian is necessary?
4. Whether the minor wife has right to repudiate the marriage after attaining the age of puberty.

In this part, in the light of above questions an attempt has been made to discuss the changing concept of marriage in various religious groups and the importance of element of consent in marriage negotiations and its effect on contemporary society.

Pact Sunt Servanda denote the purpose for which contracts are made, but, it is an established fact that all agreements are not contract. The Indian contract Act, 1972, lays down certain requirements to be fulfilled in order to make an agreement a contract. Consent is one of such essential element of a contract. In absence of consent it does not create a contract at all though it may create an agreement. Thus true Consensus Ad Idem is the foundation of all enforceable contract. The reason is that unless and until the parties to the contract agree for something in the same sense and in the same manner, there can be no possible bargain. However sometimes it may happen that consent of one party or that of both parties becomes unreal due to certain circumstances which either effect the objective or leads the parties for the undesirable result. In these circumstances it becomes unjustifiable to bind both the parties for a contract, which they never intended.

The Indian contract Act, 1872 lays down great emphasis not only to the desirability of consent but also on the presence of free consent.

Similarly in Muslim law the consent is essential element in marriage negotiations because marriage under Islam is a contract. A Muslim marriage is contracted by means of declaration and consent, both to be expressed in the preterite.⁶⁴ The contract of marriage is in its essence, a consent on the part of a man and woman to cohabit with each other and each other only. The religious element does not require anything more from the parties.

A Muslim marriage contracting between two persons possessing the capacity to enter into the contract is valid and binding, if entered into by mutual consent. The parties if Sui-Juris, must understand the nature of the marriage contract and there must be mutual consent otherwise without these elements no contract of marriage can be valid. so free consent in case of adult person, is not only essential for a valid marriage but is absolutely necessary.

Among Hanafis and Shias, the capacity of a woman who is adult and sane, to contract herself in marriage is absolute and guardians consent is not substitute for woman consent. However, in Shafei's and Maliki's Law though the consent of adult virgin is same as in Hanafis and Shias but she cannot contract herself in marriage without the interversion of a Wali. So, in Shafei's and Maliki's schools the consent of adult virgin is not sufficient for the completion of the marriage contract. It must be through the legal guardian. The consent may be given either in express terms or by implication. In the case of a girl who has once married or who is mature to understand the nature of the marriage contract, the consent is required to be

expressive. In the case of virgin girl, the jurists of all schools hold the similar view that smiling or remaining silent may be construed to imply consent. The Prophet (SAW) has said, a virgin must be consulted in everything regarding herself, and if she is silent, it signifies consent.

Aisha (R.A.) Narrated : I said "Oh Allah's messenger, a woman feels shy to give consent in marriage", he said, her consent is expressed by her silence.⁶⁵

It is clear that all the four Sunni School's and Shia school agreed on this point that the free consent of the parties in marriage is an essential requirement, if marriage solemnised without the consent of the parties it would be considered void-ab-initio in the eye of law.

But minor child is not competent to enter into a marriage contract he or she may be contracted in marriage by his or her guardian. So in case of minor, consent of guardian is required by Law. However, a minor's marriage whether with or without parental consent, is not invalid, but it is voidable at the option of the minor which the minor can exercise, on achieving puberty. This is called option at puberty and is available unconditionally if the marriage was contracted by a guardian other than father or father's father. If the father had arranged it, the marriage can be avoided only if it is contracted fraudulently or recklessly. This right should be exercised as soon as possible after attaining puberty and before consummation of marriage. But under the Dissolution of Muslim Marriage Act,

1939, a girl is entitled to secure dissolution of the marriage, contracted even by father or father's father, irrespective of the circumstances in which it was contracted. The Dissolution of Muslim Marriage Act, 1939, makes a general provision in respect of all the marriage contract by father or father's father or any other guardian recognised by law.

The option of puberty is one of the safeguards which the Muslim law provides against an undesirable marriage. The basic idea underlying the doctrine of option of puberty is to protect a minor from an unscrupulous or undesirable exercise of authority by his or her guardian for marriage. The right has been given to the minor to dissolve the marriage on attaining majority at becoming an adult, where the guardian showed a want of affection and discretion by contracting the minor in an undesirable marriage. Thus under Muslim Law the consent in case of adult virgin is absolutely /necessary and guardians consent is required for the marriage of a minor child. Only which could be revoked if found necessary.

(G) Position Under Hindu Law

Under Hindu law marriage is Holy union for the performance of religious duties. This is, in Hindu law Marriage is not a contract. So there is no concept of consent. Although, it would really happen that a Hindu girl would be consulted as to the choice of a bridegroom, and under this form of Hindu Marriage it contemplates girl being the gift by her father or other guardian i.e. Kanyadan, rather than a contract between the parties to the marriage.

Previously, young girls used to select their husband themselves and marriage of a minor were unknown to the Hindu society. The Vedas regarded by the Hindu as by the God revealed books, did not enjoin child marriage. It is expressly provided in Rig-veda, that the girls to be married should be young or fully grown up. The ancient Shastras also did not enjoin child marriage. But it was, only later on, when the society become degenerated that child marriage become prevalent in the Hindu society and new Smritis and Commentaries appeared, authorising marriage of minors and necessitating guardianship for this purpose, and in the addition of Kanyadan, in the marriage ceremonies as an essential customary rite. So in Hindu Law there is no consent of the parties in marriage, there is Kanyadan by the father of the girl. The transaction takes place entirely between the father of the girl and the future husband. The girl has nothing to do but to obey. Because she has been given in as a gift.

But the guardian certainly can not dispose of his son in marriage as he can dispose of his daughter, nor is anything said about the consent in marriage. The Hindu law provide a girl to choose a husband for herself if there being no available relative having right to give her in marriage, or if her guardian has neglected to provide a husband for her, at any reason within, three years after she has attained a marriageable age.

At par with as per Muslim law the Hindu society has also adopted the principles of option of puberty. This right is available to

a Hindu girl under clause vi of the section 13(2) of Hindu Marriage (Amendment) Act, 1976. In which the marriage should be repudiated by the wife before she attains the age of 18 years and after attaining the age of 15 years. This clause provide some relief to those Hindu girls who married, below the age of 15 years and such marriage was contracted by the guardians.

In almost all religions, consent is an essential element. So in marriage there should be consent of the parties, and consent must be free. It is also important that consent should be free where consent to a contract of marriage has been obtained by force or fraud, such a marriage is invalid, unless ratified after the coercion has ceased, or the duress has been removed. So consent should be free of force in every case to render it legally viable, sustainable and valid.

Under Islam, marriage is the basic unit of a whole community and it is foundation on which superstructure of a family and society is formed. To make the marriage stable, free consent of a male and female is definitely necessary.

Under Muslim law, no contract can be said to be complete unless the contracting parties understand its nature and mutually consent to it and that is why we say under Islam, marriage is a contract. A Muslim marriage contracted between two persons possessing the capacity to enter into the contract is valid and binding only if entered into by mutual consent. Marriage is a contract means it is effected and legally binding and confirmed by means of declaration and consent, both expressed in preterite.⁶⁶

The parties, if *sui-juris*, must understand the nature of marriage contract, and there must be mutual consent, without these elements no contract of marriage can be valid. Owing, however, to the privacy in which eastern women generally live, and the difficulties under they labour in the exercise of their own choice in matrimonial matters. The Muslim law with somewhat wearing particularly, lays down the principles by which they may not only protect themselves from the negligence of their natural guardians but may, also have a certain scope in the selection of husband. For example, when a marriage is contracted on behalf of an adult person of either sex, an essential condition to its validity is that such person should have a consent thereto. In other words marriage contracted without giving his or her authority to consent is null and void by whomsoever it may have been entered into.⁶⁷ Thus to render the marriage stable free consent of male and female or we can say they must exercise their right for choice while negotiating the marriage contract.

According to Muslim law, it is absolutely necessary that the man or someone on his behalf and the woman or someone on her behalf should agree to the marriage at one meeting and the agreement should be witnessed by two adult witnesses. The relation asks the girl within the hearing of witnesses, whether she authorise him to agree to the marriage on her behalf for the dower money offered by the husband. He explains to her the details of the proposed dower. When the girl says "yes" or signifies her consent by some other method, the three person come out and place themselves before the Qazi. The Qazi

asks the boy whether he offers to marry the girl on payment of the specified dower. He says "yes", resulting therefore that both the parties understood its nature and mutually consented to it.

Marriage has been called Mitaq (covenant) in the Holy Quran, a covenant between the husband and the wife in the presence of human witnesses and under the vigilance of "Lord", the Master of the universe. This mutually called consent is technically called Ijab (affirmation or declaration) and Qubul (acceptance or consent) in Fiqha. This shows that no woman can be forced to marry a particular man without her consent. This is her right which must be respected and honoured by the Muslim society.

In Islam marriage is a sunnah Prophet (SAW) said - when a person marries, he thus completes his faith (Religion). There are number of traditions on consent of marriage. According to Abu Hurraira (Allah be pleased with him).

"The Prophet (SAW) said : A Matron (widow or divorcee) should not be given in marriage except after consulting her, and a virgin should not be given in marriage except her permission". The people asked, O Allah's messenger (SAW). How can we know her permission. He said her silence indicate her permission.

Ibne Abbas (R) reported the Apostle of Allah (SAW) as saying: A woman who has been previously married (Thayyib) has more expressive right to her personal consent then her guardian and a virgin should also be consented and her silence implies her consent.⁶⁸

Khansa binte Khaidam - Narrated that her father gave her in another marriage, when she had already been married (matron) and, she disliked next marriage. She went to Apostle of Allah! (SAW) and mentioned it to him, he revoked her marriage and declared it invalid. This shows that permission of a woman, who has been previously married must be obtained. If her father arranged her marriage without asking her permission the marriage will be invalid.⁶⁹

Abu Hurraira (R) reported the Apostle of Allah (SAW) as saying: An orphan virgin should be consulted about herself, if she keeps silence that indicates her permission, but if she refuses, the authority of the guardian can not be exercised against her will.⁷⁰ These traditions show that the consent of the parties is necessary for the validity of marriage contract.

Under the schools of Hanafi and Shias, the capacity of woman, who is adult and sane, to contract herself in marriage is absolute. In Shia law it expressly declares, that in the marriage "of a discrete female (Rashida, who is adult), no guardian is required". The Hedaya holds the same opinion, it says "a woman who is adult and of sound mind, may be married by virtue of her own consent, although the contract may not have been made or acceded to by her guardian, and thus whether she be a virgin or Saibbah."⁷¹ Consent may be expressed or implied :

The consent may be given either in express terms or by implication only. In the case of a girl who once married or is aware of the nature of the matrimonial contract, the consent is required to

be express. But when the girl is virgin, the jurists of all schools hold that smiling or remaining silent, may be construed to imply consent, because the Prophet (SAW) said : " the virgin must be consulted in everything with regard to her. If she is silent, it signifies her assent.

According to Imam Abu Hanifa, by nature woman is independent, she can marry without the permission of guardian. As regard silence, a virgin may keep due to shamefulness. Her silence will be considered as consent but, a woman who has previously married and has no husband should utter her consent. Also her absent is rather to be supposed as she is ashamed to testify her wish, and laughter is a still more certain token of assent than silence. Contrary to it, weeping is expressed abbohrance. Some have said that if laughter be in nature of jest or derisian, it is not compliance.⁷² According to Raad-ul-Mukhtar, if the laughter is in ridicule than it will not amount to consent, nor will crying alone, be taken as denial. But if the girl merely weep slightly, it may be taken as if she was sorry to leave her relative.

Remaining silent, with a distinct, knowledge of the fact, is tantamount to consent. But silence of first, owing to some accidental cause or illness must not be taken as assent.⁷³ Fatwa-a Alamgiri says: when a father consult his daughter before marriage and does not mention the dower or the name of the husband, and she remain silent, in such a case silence is not consent, she may afterwards repudiate the marriage.

In the case of a woman who is not a virgin the consent may be given expressly by actual speech.⁷⁴ A major woman must give the consent herself. Where consent is obtained by the father's brother or uncle from a major virgin it may not be given expressly but when the consent is obtained by any other person it must be given in express words.⁷⁵ In famous case *Jaiman Vs Rullia*, it was held that where father, mother or the brother is used to take consent for marriage of a virgin girl and she remain silent it tantamounts to her consent. Thus if permission of an adult virgin is asked for marriage by a person other than the nearest guardian i.e. by strangers or a remote wali there is no significance attached to her silence since she has been married and living with her husband, and by virtue of this she ceases to be a virgin and so she require to give her consent expressively. Among Hanafi's and the Shia's, to the validity of contract of marriage entered into on her own behalf is enough even if it is without mediation of a wali.

Under Shafai's and Maliki's Schools, although the consent of an adult virgin is essential as among the Hanafi's and the Shia's, to the validity of a contract of a marriage entered into, on her own behalf. But she cannot contract herself in marriage without the intervention of wali. The consent of an adult virgin is not sufficient for the completion of the marriage contract, it must be given through the guardian. Thus, as per Shafai's and Maliki's Schools, a woman can not personally consent to the marriage. The Wali's intervention is required by the Shafai's and Maliki's school to supplement the presumed capacity of the woman to understand the nature of the

contract, to settle the terms and other similar points, and to guard the girl from being victimised by an unscrupulous adventurer, or from marrying a person morally or socially unfitted for her.

It is clear from the above discussion that in Shafai's and Maliki's schools, the Wali or guardian has played a significant role in marriage only upto the pre-marriage contract. Even then the consent of the parties is an essential element and without consent of the parties, the marriage will be rendered void.

(H) Importance of Guardian's consent in the marriage contract of a minor

A boy or a girl who has not attained puberty is not competent to enter into a contract of a marriage, but he or she may be contracted in marriage by his or her guardians. A guardian for marriage is a person authorised by law to effect a valid contract of a marriage of a minor or person of unsound mind.

(I) Some Selected Hadith

Aisha (R) reported the Apostle of Allah (SAW) as saying "The marriage of a woman who marries without the consent of her guardian is null and void (says three times). If there is cohabitation she gets her dower for the intercourse her husband has had. If there is dispute, the Sultan is the guardian and will decide upon it.⁷⁶ Abu Musa reported the Prophet (SAW) as saying: "There is no marriage contract without the permission of a guardian."⁷⁷

It is related from Abu Saad and Ibn Abbas, that the Apostle

of Allah says: "whoever has a son born to him, let him give a good name, and teach him good manners, and when he reaches puberty let him get married, and if he reaches puberty, and he does not get him married, and he falls into sin, than the father is only responsible.⁷⁸

It is connected from Omar Bin Khattab and Anas Bin Malik that the Apostle of Allah says : " it is written in the Taurat, that he whose daughter reaches twelve years of age, and he has not given her in marriage and she falls into sin, he is responsible for that sin.⁷⁹

These traditions shows that the consent of the guardian is necessary for validity of a marriage. If a woman marries without the consent of her guardian, her marriage is void. But this is necessary only for minors and not for adults.

The Prophet (SAW) is reported to have said, that a guardianship in the first place belong to Usubah (agnates) in the order of inheritance. The more remoter being excluded by the nearer.⁸⁰ Thus the right guardianship belongs successively to the father, paternal grandfather, mother and other male relations on the father side in order of inheritance enumerated in the table of residuaries. In default of paternal relations this right devolves upon the mother and other maternal relations within the prohibited degrees. In default of all relations the Qazi is the guardian.

The Holy-Quran also provides the marriage of an orphan and widows for protecting the interests of orphans and minors by marrying them by their guardians. From time to time the Holy Quran gives guidelines to human being for good behaviour, case and protect

of orphans, widows and children. This again and again it is impressed upon the community of Islam to be just in their deal with women, orphans and children.

(J) Position Under Different Laws :

In Islam there is no concept of Kanyadan or any ceremonial giving of the bride in marriage contract. The guardian those act during marriage, act as a mediator. The right to contract a minor in marriage belongs to natural guardian and Qazi.

i) Hanafi Law

According to Imam Abu Hanaifa, the guardian has full authority to marry his minor girl whether she is a virgin or previously married.

ii) Maliki Law

Under this school a girl who has attained majority cannot marry without a guardian.

iii) Hamabli Law :

In this school father also has the power to give their children of both the sexes in marriage without their consent, until they reach the age of puberty.

iv) Shafai Law :

Under Shafai law, the father has the right of Ijbar over his major daughter as long as she is virgin. The Shafai text reads as :

"A father can dispose of as he pleases the hand of his daughter without asking her consent whatever her age may be, provided, she is still a virgin. It is however, always commendable to consult her as to her future husband and her formal consent to the marriage is necessary if she has already lost her virginity"

It is clear in all the Sunni's and Shia's schools that when a minor has been contracted in marriage is valid and binding, and it can not be annulled by the minor on attaining puberty. But where a father or father's father who is not "just" or who is addicted to evil ways were to marry his infant daughter to her manifest disadvantage, or to a Ghair Kufa (to the one who is unequal to her by birth or by position) such marriage will not be operative or valid, and Qazi will the power to set it aside at the insistance of another wali though remote.

A Wali who is fasik-ul-mutahattik, that is addicted to evil ways is not entitled to the Wilayat-ul-Ijbal (The guardianship in marriage). Wilayat-ul-Ijbar means the right of a guardian to impose on his/her ward the status of marriage.

Among the Shafei, Ithna Asharia, and Ismaili laws; only the father or the father's father can contract a valid marriage on behalf of a minor. The following rules apply to all marriage guardians and recognised by all four schools:

1. The order of priority between the various persons who can act as guardian, one or the another, can not be changed either by will or otherwise.
2. A remoter guardian can not act out of turn, and a non guardian

can not act at all. In either case the marriage, if it has taken place, may be ratified by the true marriage guardian, where the later refuse to do so the marriage may be held to have no legal effect.

3. It is not clear that what has to be done if, in case, the person whose turn is to act as marriage guardian happens to be a non Muslims. The entitlement will pass on to the next person in order. The affect of the Caste Disabilities Removal Act 1850 (which repeal all legal provisions imposing less of eight on apostates) on the rules of Muslim law relating to marriage guardianship is yet to be clarified.

As regards to both male or female who are incompetent to contract their own marriage. The rules of Muslim law is as follows :

1. Under none of the schools of Muslim law can a minor person (male or female) contract marriage without the consent and intervention of his or her marriage guardian.
2. Under the Shafei law, a girl though neither minor nor insane can not contract her first marriage without the consent of her marriage guardians, but where, she is not marrying first time, this rule does not apply.

v) Shia Law :

Under Shia Law, the father and grandfather are the only guardian for marriage of a minor girl. The mother has no power of giving a minor child in marriage if she is an executrix of the father.

The order of priority between the two is first father's father then the father. A Wali or guardian must be major, sane and free. He must not be a minor or lunatic, with or without lucid intervals or slave.

vi) Ismailia Law

Ismailia law too, a girl can not (though not minor) contract a marriage without her marriage guardians intervention.

Dealing with the above issues, the pertinent questions are cropped up as - (a) where the consent of a marriage guardian is necessary can the personal wishes of the boy or the girl to be married, can be wholly dispensed with? (b) whether the concurrence of both (the persons to be married and his or her guardian) required by Law? There is no uniform answer to these questions. But the position under Muslim law is as follows :

1. The marriage guardian of a minor can contract a marriage on his or her behalf with or without his or her consent.⁸¹
2. The marriage guardian of an Ismaili major girl can not contract her marriage without her consent. If a guardian does so, the marriage will be void.
3. The marriage guardian of a Shafei girl who is not minor may contract her first marriage with or without her consent, but it is desirable to obtain the same.⁸²

Regarding the last of the above mentioned case (i.e. the case of Shafei girls) on the basis of non-nandatory textual rule regarding the desirability of obtaining the girls consent and this emphasis, keeping in view of contractual element in marriage contract, the

Indian courts have held that where the marriage has in such a case, been contracted openly without the consent of the girl, it will not be valid⁸³.

It is submitted that the marriage of Shafei major (baligh) girl contracted by her guardian without her consent should be considered voidable at her option.

If two guardians standing in the same degree like two brothers or two paternal uncles, were to marry a minor girl to two different individual. The first marriage in order of time will take effect but if they are contemporaneous or if it can not be ascertained which is prior in time both will be void.⁸⁴ or the girl may on attaining puberty, declare that one is the first which will be taken to be operative.⁸⁵

As quoted by Samurah; the Prophet (SAW) as saying ! Any woman is married by two guardians to two different men belongs to the first of them.⁸⁶

If a wali refuses to marry, it is an oppression, than the sovereign or his representative will do the needful. Therefore, marriage of minor would be done by Qazi.⁸⁷ But not, when the wali is absent especially on Haj. If the wali-ul-Akrab altogether prohibits the marriage, then the Qazi would authorize the next guardian to contract a marriage of the minor .

Ibn Najum has declared judicially that, when the Qazi has given his sanction to the marriage of a minor there can be no further dispute and no outsider can again question it. If there is the absence of all relations, wilayat is shifted to Sultan and then to Qazi.

It is clear that if a minor (one who is nabaligh under Muslim Law) contracts a marriage without the consent of the marriage guardian, the marriage will be void, the later may while the former remains a minor, ratify it by giving ex-post facto consent.

Doctrine of Option of Puberty

A minor can not legally enter into a marriage contract nor is contract of marriage entered into by a guardian on his or her behalf, always binding on the minor. The minor can on attaining puberty ratify such a contract if he or she chooses. This right of dissolution of marriage on attaining puberty is called Khayar-ul-Bulugh or option of puberty. This right is one of the safeguards which the Muslim Law provides against an undesirable marriage. Hadith provide women the right to repudiate the marriage forced on them through pressure direct or indirect under the assumption that girl being minor cannot exercise her independent discretion regarding the marriage due to her physical and mental immaturity and in such a situation she can be victim of undue influence rather these types of marriage might have had very bad consequences.

Ibn Abbas reported that a virgin came to the Prophet of Allah (SAW) and narrated that her father had given her in marriage to a person whom she disliked. Prophet (SAW) gave her option.⁸⁸

Aisha (R) reported, that a girl came and stated that her father had given her in marriage to his nephew and she dislike him. I told to the Prophet (SAW) the full story of the girl. He at once sent a

message for the father of the girl and enquired from him whether the facts stated were true, after which he told the girl that she was at liberty to choose her life partner or repudiate her marriage, and that she would only to know whether woman had any right in marriage contract.⁸⁹

Ibn Umar says; Uthman bin Mazum left behind a young daughter. My uncle Qudamah, married her to me, and did not even consult her when the girl came to know of this, she dislike this marriage and wished to marry Mughirah bint Shubah. So she was married to Mughirah⁹⁰. All these Ahadith provides conclusive proof that girl is as free in Islam as a boy to choose or repudiate her partner while negotiating the marriage contract.

Under Hambli Law position is same as in the Maliki Law and in Shia law, it is same as in Hanafi Law.⁹¹

In every case, where option is available, it must be exercised immediately on attaining puberty. Imam Abu Hanifa held the view that option must be exercised immediately on attaining puberty while other authorities opined that it could be exercised without any unreasonable delay after attaining puberty. This right is to be pressed while the marriage of her not yet been consummated. The rule respecting to the doctrine of option of puberty is that a girl who is unaware of her marriage, when she attain puberty, retains this right until she becomes aware of the marriage and option is prolonged until she is acquainted with the fact that she has the right to repudiate the

marriage and she can exercise that right within a reasonable time. The option is lost if the wife, after she attains the puberty permits the marriage to be consummated but mere consummation is not sufficient unless happens it be with the wife's consent.

In case of dissolution of Muslim marriage through 'option of puberty', Qazi's order for cancelling the marriage is necessary. This is a procedural safeguard as many rights and duties flow from the cancellation of marriage. Likewise, Qazi's order cannot be passed when husband is not represented. Marriage in the eyes of law, shall be presumed to subsist unless the order is made by the Qazi.

CONCLUSION

In Muslim marriage mutual consent is the foundation stone of marriage relationship which must be from any type of pressure. In Muslim law marriage is a contract and it implies a mutual consent, when a marriage is contracted on behalf of an adult person of either sex, it is an essential condition for its validity that such persons should have mutual consent thereto. But under Shafei's and Maliki's Law the wali or guardian has played a significant role in Marriage only upto the pre-marriage contract' under which a woman cannot contract herself in marriage without the intervention of wali. Even then the "consent of the parties is an essential element and without consent of the parties, the marriage would be rendered void. The consent of the woman, whether previously married or not is essential for marriage. In case of virgin it is the duty of the father or the

guardian to consult her and seek her assent, even if it is indicated by her observing silence. But in case of woman, previously married she has been given more right to express her consent than that of guardian. The reason is quite obvious that a virgin girl is comparatively shy and feels hesitant in expressing her opinion, she is, therefore, permitted to express her consent by observing silence. All four schools of Sunni's and Shia's agreed on this point that free consent of the parties in marriage is an essential element for marriage, if marriage is solemnised without the consent of the parties, it would be considered void-ab-initio in the eye of Law. The conclusion which would be drawn is that marriage is effected by an expression of mutual consent is the only possible way of offer and acceptance to enter into marriage contract.

But in case of minor's marriage, the consent of guardian is necessary. Without guardian's consent marriage is null and void. There are misconceptions in India that guardian of a Muslim minor, gives the minor in marriage, this is not correct. In Islam there is no concept of Kanyadan or any ceremonial gifting of the bride in marriage. The guardian acts as a mediator, and his consent is insisted upon by the law, but minor is not the guardian's property which may be "given" or "disposed off" in marriage contract. In other words, parents should provide their daughters and sons their right to make choice while going for marriage contract. But situations reverse if there is tension between parents' choice and their sibling's choice, the choice of parents prevails over sibling's choice in majority of the cases. So far

as the question of conflict between the views of the minor and the guardian regarding the minor's marriage, law gives priority to those of the guardian, since law does not regard a minor as mature enough to take a sound decision for himself or herself, *inter alia*.

If, in case a minor contracted a marriage without consent of the guardian, the marriage will be void. Later minor may ratify the marriage contract subject to stipulated restrictions in their respective schools as an option at puberty.

The Dissolution of Muslim Marriage Act has changed the right of females related to the option at puberty. Under Muslim law, a person cannot repudiate the marriage after recovery of reason, but this Act makes a general provision in respect of all the marriage contracted by father or by any other guardian. Another change has been made by this Act in respect of time when the right of option of puberty can be exercised by the minor girls. Under Muslim law the exercise of this right arises on attainment of puberty which may extend to the age of fifteen years. But under this Act marriage may be repudiated after attaining the age of fifteen years and before completing the age of eighteen years. Thus this Act made a general provision for any girl either *Saibba* or virgin and this right is not available to a male.

Where consent to a contract of marriage has been obtained by force or fraud, the marriage is voidable unless ratified after the coercion has ceased or duress has been removed. If one shows that

consent was obtained by fraud or force, then marriage is voidable at the insistence of the party whose consent was not so obtained. Thus for the validity of a marriage consent should be free from fraud, force or mis-representation etc.

In short consent is most important element of marriage contract. It gives the parties to the marriage a mental or psychological satisfaction that whatever they are doing, they are doing by their free will. Thus every legal system, including Hindus must give weightage to consent.

Approach of Hindu Law

The marriage of a minor were unknown to the Hindu Society. It is expressly provided in Rigveda, that the girls to be married should be fully grown up and passed her childhood. In Dhanwantri, a renowned Hindu Physician and author of the famous Ayurvedic book, called Sushruta, says!

"A conception effected by a man under twenty four years of age, in a girl below sixteen years of age, Miscarries before reaching maturity in the womb, and if a child is born in such case, it will not live long, but it will be weak, hence no sexual intercourse should be held with a girl of a very tender age.⁹²

It was only at later stages in which the society became degenerated that child marriage became prevalent in the Hindu society, and new Smirities appeared, authorising marriages of minors and necessitating guardianship for the marriage of a minor.

The Dharmshastras did not deal with the law of guardianship of marriage in any detail. The broad principles under Hindu Law is that the king is the Supreme guardian of all the minor within the realm. The minor children mostly lived in the joint family and were always under the protection of Karta. Even after the death of the father the child was not without protection, who soever was the Karta protected the child even if a child was outside the role of joint family, he ,if belonged to the first three classes, has to go the Guru's Ashram for study and was under the protection of the Guru. Regarding guardiship for marriage of minors, it may be stated that, according to the smiriti of Yajanvalkya, (which is the oldest and most authoritative smirit of Manu) there being, no such reference to guardianship for marriage, the father, grandfather, other paternal relations of the girl and the mother were in order, qualified to act guardian for marriage and performs Kanyadan.

In the case of male minor, however, his legal guardian was qualified to give consent for his marriage. It may be noted that the said rules of guardianship in marriage of female minor were not the case as for guardianship of her persnal property. Narada mentioned father and mother as guardian.

So, the primary duty and correlative right, of giving a girl in marriage, rests with the father. This right is not to be lost merely because the father has been convicted of theft or any other affence not connected with domestic relations. But where the father has disserted his wife and daughter, the mother can give the daughter in

marriage without the consent of the father. Even where the father is alive and otherwise capable of giving away his daughter, the non-consent will not declare a marriage invalid, merely because the daughter was given in marriage by the mother without his consent, provided the necessary ceremonies have been performed and there has been no force or fraud. So this rests on the principle that guardianship for the purpose of marriage is not so much a right as a duty and the consent of the guardian is not a condition precedent to the validity of marriage. A marriage duly solemnised and otherwise valid, is not rendered invalid or voidable because it was brought about without the consent of the guardian in marriage, or by a person not entitled to act as a guardian because there was preferential guardian.

Thus the marriage of a minor is not prohibited and the consent of their guardian is sufficient for the validity of marriage. In the absence of the father, mother becomes the legal guardian of her daughter but Kanyadan shall be followed by the paternal guardian. And only those persons can act as guardian who himself has completed the age of twenty one years.

In *Mst. Kalawati Vs Deviram*⁹³ where a girl below sixteen years was given in marriage by her brother who himself was below eighteen years. It was held that the minority of the bride or her guardian is by itself not a ground for rendering the marriage void and accordingly it is valid. But in *Kanti Devi Vs Shri Ram Kalu*⁹⁴. It has been observed by Punjab High Court that, where the girl is below 18 years on the date of marriage and the doctrine of "*factum valet*" has

no application. The doctrine may be considered if after the alleged solemnization of marriage parties live together as husband and wife for sometimes.

But a contrary view was expressed in *Mst. Premi Vs Dayaram*⁹⁵. The Himachal Pradesh High Court held that the marriage of a minor is neither void nor even voidable though it contravened the condition specified in clause (vi) of section 5 of Hindu Marriage Act, 1955, is as much as the consent of her guardian was not obtained. The court through injunction can restrain an intended marriage where the bride is below eighteen years and the consent of guardian has not been obtained. It has been decided by Patna High Court in *Uma Shankar Prasad Vs Smt. Radha* that the jurisdiction of civil court (not necessarily district court) to grant injunction when bride is being eighteen years and the requisite consent of the guardian is lacking.

India is inhabited by various cultural, religious and ethnic groups that have their own characteristics, attitudes and approaches towards the question of matrimonial laws of India. The main characteristics of the matrimonial laws of India is its diversity. There is no uniform single code of Law applicable to the marital relations of all, irrespective of their religion. The policy of Hindu Law for Hindus and Muslim Law for Muslims was initiated by Warren Hastings in the year 1772. After the adoption of the secular constitution for India, the policy followed by the government continued to be same. There are separate Acts applicable to

christians, Parsis, Muslims and Hindus in the matter of marriage. Besides these personal laws there is Special Marriage Act, 1954, a permissive piece of legislation for their religions. In India there is no uniform single code of law applicable to the marital relations of all.

In the light of above discussion, it is crystal clear that in India all the religious systems have provided that in marriage of a minor, the consent of guardian is necessary. Even the minor wife may like to repudiate the marriage after attaining the age of puberty. As provided in Muslim Law and also recognised by the Hindu Law through the Section 13(2) (iv) of Hindu Marriage (Amend) Act 1976.

As per Muslim law, the Hindu society has also adopted the principles of option of puberty. This right is available to a Hindu girl under (iv) of the Section B(2) of Hindu Marriage Act which was added by the Amendment Act of 1976. It requires that the marriage may be repudiated by the wife before she attains the age of 18 years and after attaining the age of 15 years. This clause provide some relief to those Hindu girl who married below the age of 15 years and such marriage was contracted by the guardian. However, under Muslim law it is also essential that the marriage should not have been consummated before she repudiated it, but under Hindu law, clause enacts that, it implies whether the marriage was solemnised before or after commencement of the Amendment Act.

Islam accepts marriage as an essential requirement for the well being at the individual and the society. It does not consider it

sexual desire per se as evil as an element fraught with evil consequences. It provides for the satisfaction of the natural instinct by ensuring a healthy and desirable sex relation as a wholesome part of ones life.

Laws and practices governing women's personal status their legal capacity and role in the family continued to deny women rights. While this type of discrimination varied from region to region, women throughout the world found that their relationship to a male relative or husband determined their rights. As Islam provides her rights but in majority of cases her consent in marriage was not generally thought to be necessary and she was obliged to submit to the wishes of her parents, this practice should be stopped in future generation.

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Chapter - III

FEMINISM AND ISLAM

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CHAPTER - III

FEMINISM AND ISLAM

Introduction :

Islam brought radical changes regarding women and society, despite the deeply entrenched patriarchy of seventh century Arabia. The Quran provides women with explicit rights to inheritance, independent property, divorce, marriage and the right to testify in a court of law. It prohibits wanton violence towards women and girls and is against duress in marriage and community affairs. Women and men equally are required to fulfill all religious duties, and are equally eligible for punishment for Misdemeanour. Finally, women are offered the ultimate boon. Paradise and proximity to Allah : "whoever does an atom's weight of good, whether male or female, and is a believer, and such shall enter into paradise.¹

The Quranic story of human origins 'Man is not made in the image of God. Neither is a flawed female helpmate extracted from him as an after thought or utility. Dualism is primordial design for all creations : 'From all created' things are pairs.

In the period immediately following the death of the Prophet (SAW), women were active participants at all levels of community affairs i.e., religious, political, social, educational, intellectual. They played key roles in preserving traditions, disseminating knowledge and challenging authority when it went against their understanding of the Quran and the prophetic legacy.

The Prophet's (SAW) wife Aishah, from whom the Prophet (SAW) said we should learn 'half our religion', was sought after as an advisor to the early jurists. In the famous 'Battle of the Camel', she was an army general. The Prophet (SAW) even received revelation while resting his head on her lap. Unfortunately, this period passed before it could establish a pattern sustainable as historical precedent. And the name of Aisha cannot erase what was to happen to the status of women in the following thousand years.²

Not until the post colonial 20th century would Muslim women re-emerge as active participants in all areas of Islamic public, political, economic, intellectual, social, cultural and spiritual affairs.

Today Muslim women are striving for greater inclusiveness in many diverse ways, not all of them in agreement with each other. At the Beijing Global women's Conference in 1995, rightly attempts to form a Muslim Women's caucus at the non-governmental organisation forum became screaming sessions. The word 'Islamic Feminism' gained currency in the 1990s through scholars and activists.⁴

1. Islamic Traditions and the Feministic Movements : Confrontation and Cooperation

Whether living in the Middle East or Africa, in Central Asia, in Pakistan, in Southeast Asia, or in Europe and the America, Muslim women tend to view the feminist movement with some apprehension. Although there are some features of the feminist cause with which we as Muslims would wish to join hands, other features generate our

disappointment and even opposition. There is therefore no simple or "pat" answer to the question of the future cooperation or competition which feminism may meet in an Islamic environment.

There are however a number of social, psychological, and economic traditions which govern the thinking of most Muslims and which are particularly affective of woman's status and role in Islamic society. Understanding these can help us understand the issues which affect male and female status and roles, and how we should react to the movements which seek to improve the situation of women in any of the countries where Muslims live.

2. Responsible Traditional Factors : A. The Family System :

One of the Islamic traditions which will affect the way in which Muslim women respond to feminist ideas is the advocacy in Islamic culture of an extended rather than a nuclear family system. Some Muslim families are "residentially extended" - that is, their members live communally with three or more generations of relatives (grandparents, uncles, aunts, and their offspring) in a single building or compound. Even when this residential version of the extended family is not possible or adhered to, family connections reaching far beyond the nuclear unit are evident in strong psychological, social, economic, and even political ties. Mutual supports and responsibilities affecting these larger consanguine groups are not just considered desirable, but they are made legally incumbent on members of the society by Islamic law. The Holy Quran itself exhorts to extended family solidarity; in addition it specifies the extent of

such responsibilities and contains prescriptive measures for inheritance, support, and other close interdependencies within the extended family.⁵

Our islamic traditions also prescribe a much stronger participation of the family in the contracting and preservation of marriages. While most Western feminists would decry family participation or arranged marriage as a negative influence because of its apparent restriction of individualistic freedom and responsibility, as Muslims we would argue that such participation is advantageous for both individuals and groups within the society. Not only does it ensure marriages based on sounder principles than physical attraction and sexual infatuation, but it provides other safeguards for successful marital continuity. Members of the family provide diverse companionship as well as ready sources of advice and sympathy for the newly married as they adjust to each others' way. One party of the marriage cannot easily pursue an eccentric course at the expense of the spouse since such behaviour would rally opposition from the larger group. Quarrels are never so devastating to the marriage bond since other adult family members act as mediators and provide alternative sources of companionship and counsel following disagreements. The problems of parenting and generational incompatibility are also alleviated, and singles clubs and dating bureaus would be unnecessary props for social interaction. There is not need in the extended family for children of working parents to be unguarded, unattended, or inadequately loved and socialized because the extended family home is never empty. There is therefore

no feeling of guilt which the working parent often feels in a nuclear or single-parent organization. Tragedy, even divorce, is not so debilitating to either adults or children since the larger social unit absorbs the residual numbers with much greater ease than nuclear family organization can ever provide.

The move away from the cohesiveness which the family formerly enjoyed in western society, the rise of usually smaller alternative family styles, and the accompanying rise in individualism which many feminists advocate or at least practice, are at odds with these deep-rooted Islamic customs and traditions. If feminism in the Muslim world chooses to spouse the western family models, it should and would certainly be strongly challenged by Muslim women's groups and by Islamic society as a whole.

[B] Individualism Vs. The Larger Organization : The traditional support of the large and intricately interrelated family. Organization is correlative to another Islamic tradition which seems to run counter to recent Western trends and to feminist ideology. Islam and Muslim woman generally advocate molding of individual goals and interests to accord with the welfare of the larger group and its members. Instead of holding the goals of the individual supreme, Islam instills in the adherent a sense of his or her place within the family and of a responsibility to that group. This is not perceived or experienced between Muslims as repression of the individual. Other traditions which will be discussed later guarantee his or her legal personality. Feminism, therefore, would not be espoused by Muslim women as a

goal to be pursued without regard for the relation of the female to the other members of her family. The Muslim woman regards her goals as necessitating a balance with, or even subordination to, those of the family group. The rampant individualism often experienced in contemporary life, that which treats the goals of the individual in isolation from other factors, or as utterly supreme, runs against a deep Islamic commitment to social interdependence.

C. DIFFERENTIATION OF SEX ROLES:

A third Islamic tradition which affects the future of any feminist movement in an Islamic environment is that it specifies a differentiation of male and female roles and responsibilities in society. Feminism, as represented in Western society, has generally denied any such differentiation and has demanded a move toward a unisex society in order to achieve equal rights for women. By "unisex society," This means one in which a single set of roles and concerns are given preference and esteem by both sexes and are pursued by all members of the society regardless of sex and age differentials. In the case of Western feminism, the prefer goals have been those traditionally fulfilled by the male members of society. The roles of providing financial support, of success in career, and of decision making have been given ovberwhelming respect and concern while those dealing with domestic matters, with child care, with aesthetic and psychological refreshment, with social interrelationships, were devalued and even despised. Both men and women have been forced into a single mold which is perhaps more restrictive, rigid and

coercive than that which formerly assigned men to one type of role and women to another.

This is a new brand of male chauvenism with which Islamic traditions cannot conform. Islam instead maintains that both types of roles are equally deserving of pursuit and respect and that when accompanied by the equity demanded by the religion, a division of labour along sex lines is generally beneficial to all members of the society.

This might be regarded by the feminist as opening the door to discrimination, but as Muslims we regard Islamic traditions as stand clearly and unequivocally for the support of male-female equity. In the Quran, no difference whatever is made between the sexes in relation to God."For men who submit (to God) and for women who submit (to God), for believing men and believing women, for devout men and devout women, for truthful men and truthful women, for charitable men and charitable women, for men who fast and women who fast, for men who guard their chastity and women who guard, for men who remember go much and for women who remember - for them God has prepared forgiveness and a mighty reward". 'Whoever performs good deeds, whether male' or female and is a believer, we shall surely make him live a good life and we will certainly reward them for the best of what they did"⁶

It is only in relation to each other and society that a difference is made; a difference of role or function. The rights and responsibilities of a woman are equal to those of a man, but they are

not necessarily identical with them. Equality and identity are two different things, Islamic traditions maintain, the former desirable, the latter not. Men and women should therefore be complementary to each other in a multi-function organization rather than competitive with each other in a uni-function society.

The equality demanded by Islamic traditions must, however, be seen in its larger context if it is to be understood properly. Since Muslims regard a differentiation of sexual roles to be natural and desirable in the majority of cases, the economic responsibilities of male and female members differ to provide a balance for the physical differences between men and women and for the greater responsibility which women carry in the reproductive and rearing activities so necessary to the well-being of the society. To maintain, therefore, that the men of the family are responsible for providing economically for the women or that women are not equally responsible, is not a dislocation or denial of sexual equity. It is instead a duty to be fulfilled by men as compensation for another responsibility which involves the special ability of women. Likewise the different inheritance rates for males and females, which is so often sited as an example of discrimination against women, must not be seen as an isolated prescription.⁷ It is but one part of a comprehensive system in which women carry no legal responsibility to support other members of the family, but in which men are bound by law as well as custom to provide for all their female relatives.

Does this mean that Islamic traditions necessarily prescribe maintaining the status quo in the Islamic societies that exist today?

The answer is a definite "No." Many Muslims thinking - both men and women - would agree that their societies do not fulfill the Islamic ideals and traditions laid down in the Quran and reinforced by the example and directives of the Prophet Muhammad (SAW). It is reported in the Quran and from history that women not only expressed their opinions freely in the Prophet's presence but also argued and participated in serious discussions with the Prophet himself (SAW) and with other Muslim leaders of the time. Muslim women are known to have even stood in opposition to certain Caliphs, who later accepted the sound arguments of those women. A specific example took place during the caliphate of 'Umar ibn al Khattab.⁸ The Quran reproached those who believed woman to be inferior to men⁹ and repeatedly gives expression to the need for treating men and women with equity¹⁰. Therefore, if Muslim women experience discrimination in any place or time, they do not and should not lay the blame on Islam, but on the un-Islamic nature of their societies and the failure of Muslims to fulfill its directives.

D. SEPARATE LEGAL STATUS FOR WOMEN :

A fourth Islamic tradition affection the future of feminism in Muslim societies is the separate legal state for women which is demanded by the Quran and the Shari'ah. Every Muslim individual, whether male or female, retains a separate identity from cradle to grave. This separate legal personality prescribes for every woman the right to contract, to conduct business, to earn and possess property independently. Marriage has no effect on her legal status, her

property, her earnings, or even on her name¹¹. If she commits any civil offence, her penalty is no less or no more than a man's in a similar case¹². If she is wronged or harmed, she is entitled to compensation just like a man.¹³ The feminist demand for separate legal status for women is therefore one that is equally espoused by Islamic traditions.

E. POLYGyny:

Although the taking of plural wives by a man is commonly called polygamy, the more correct sociological designation is polygyny. This institution is probably the Islamic tradition most misunderstood and vehemently condemned by non-Muslims. It is one which the Hollywood stereotypes "play upon" in their ridicule of Islamic society. The first image conjured up in the mind of the Westerner when the subject of Islam and marriage is approached is that of a religion which advocates the sexual indulgence of the male members of the society and the subjugation of its females through this institution.

Islamic tradition does indeed allow a man to marry more than one woman at a time. This leniency is even established by the Quran. But the use and perception of that institution is far from the Hollywood stereotype. Polygyny is certainly not imposed by Islam; no is it a universal practice. It is instead regarded as the exception to the norm of monogamy, and its exercise is strongly controlled by social pressures.¹⁴ If utilized by Muslim men to facilitate or condone sexual promiscuity, it is not less Islamically condemnable than serial

polygyny and adultery, and no less detrimental to the society. Muslims view polygyny as an institution which is to be called into use only under extraordinary circumstances. As such, it has not been generally regarded by Muslim women as a threat. Attempt by the feminist movement to focus on eradication of this institution in order to improve the status of women would therefore meet with little sympathy or support.

3. DIRECTIVES FOR THE FEMINIST MOVEMENT IN AN ISLAMIC ENVIRONMENT

What can be learned about the future compatibility or incongruity of feminism in a Muslim environment from these facts about Islamic traditions? Are there any general principles to be gained, any directives to be taken, by those who work for women's rights and human rights in the world?

A. INTERCULTURAL INCOMPATIBILITY OF WESTERN FEMINISM :

The first and foremost principle would seem to be that many of the goals of feminism as conceived in Western society are not necessarily relevant or exportable across cultural boundaries. Feminism as a Western movement originated in England during the 18th century and had as one of its main goals the eradication of legal disabilities imposed upon women by English Common law. These laws were especially discriminatory of married women. They derived

in part from Biblical sources (e.g., the idea of man and woman becoming "one flesh," and the attribution of an inferior and even evil nature to Eve and all her female descendants) and in part from feudal customs (e.g., the importance of carrying and supplying arms for battle and the concomitant devaluation of the female contributions to society). The Industrial Revolution and its need for women's contribution to the work force brought strength to the feminist movement and helped its advocates gradually break down most of those discriminatory laws.

Since the history and heritage of Muslim peoples have been radically different from that of Western Europe and America, the feminism which would appeal to Muslim women and to the society generally must be correspondingly different. Those legal rights which Western women sought in reform of English Common law were already granted to Muslim women in the 7th century. Such a struggle therefore holds little interest for the Muslim woman. In addition, it would be useless to try to interest us in ideas or reforms that run in diametrical opposition to those traditions which form an important part of our cultural and religious heritage. There has been a good deal of opposition to any changes in Muslim Personal Status laws since these embody and reinforce the very traditions which we have been discussing. In other words, if feminism is to succeed in an Islamic environment, it must be an indigenous form of feminism, rather than one conceived and nurtured in an alien environment with different problems and different solutions and goals.

4. THE FORM OF AN ISLAMIC FEMINISM :

If the goals of Western feminism are not viable for Muslim women, what form should a feminist movement take to ensure success?

Above all, the movement must recognise that, whereas in the West, the mainstream of the women's movement has viewed religion as one of the chief enemies of its progress and well-being, Muslim women view the teachings of Islam as their best friend and supporter. The prescriptions that are found in the Quran and in the example of the Prophet Muhammad, (SAW) are regarded as the ideal to which contemporary women wish to return. As far as Muslim women are concerned, the source of any difficulties experienced today is not Islam and its traditions, but certain alien ideological intrusions on our societies, ignorance, and distortion of the true Islam, or exploitation by individuals within the society. It is a lack of an appreciation for this fact that caused such misunderstanding and mutual distress when women's movement representatives from the West visited Iran both before and after the Islamic Revolution.

Second, any feminism which is to succeed in an Islamic environment must be one which does not work chauvenistically for women's interest alone. Islamic traditions would dictate that women's progress be achieved in tandem with the wider struggle to benefit all members of the society. The good of the group or totality is always more crucial than the good of any one sector of the society. In fact, the society is seen as an organic whole in which the welfare of each

member or organ is necessary for the health and well being of every other part. Disadvantageous circumstances of women therefore should always be countered in conjunction with attempt to alleviate those factors which adversely affect men and other segments of the society.

Third, Islam is an ideology which influences much more than the ritual life of a people. It is equally affective of their social, political economic, psychological, and aesthetic life. "Din," which is usually regarded as an equivalent for the English term "religion" is a concept which includes, in addition to those ideas and practices customarily associated in our minds with religion, a wide spectrum of practices and ideas which affect almost every aspect of the daily life of the Muslim individual. Islam and Islamic traditions therefore are seen today by many Muslims as the main source of cohesiveness for nurturing an identity and stability to confront intruding alien influences and the cooperation needed to solve their numerous contemporary problems. To fail to note this fact, or to fail to be fully appreciative of its importance for the average Muslim - whether male or female - would be to commit any movement advocating improvement of women's position in Islamic lands to certain failure. It is only through establishing that identity and stability that self-respect can be achieved and a more healthy climate for both Muslim men and Muslim women will emerge.

5. A Brief History of Feminism in the West

Only in last two hundred years of western civilization has the idea that women should have equal rights with men, has been

given serious consideration. Before the industrial revolution in Europe, the power of Church stood heavily against such a suggestion. Most women worked hard to serve husbands, bear children, keep homes or if unmarried, support ageing parents.

In 1770, French atheist philosopher Baron D, halbach wrote of the tyranny of man over woman. Frenchman Condorcet hoped the national education system to apply equally to woman. In 1791, Masie Olympe de Gouges published a 'Declaration of the rights of women', which made women politically conscious¹⁵. Marry Wollstonecraft during 1759-1797, criticized the role of women in the home. She questioned the institution of marriage that made women the slaves of men.

The most important event in the history of feminism is the Seneca Falls Declaration in 1848. The convention was called by Elizabeth Cady Stanton and Lucretia Mott. It criticised marriage laws, conditions of employment and property laws. A certain advance was made, which was facilitated by women's organization to a great extent. The prominent organisation were, National Women's Suffrage Association and the American Women's Suffrage Association, their main target being, the enforcement of State laws and Federal laws regarding women.¹⁶

6. Feminist Awakening and Movements :

Spread of education, industrial revolution, American independence and the world were are some of the factors awakening women. Education broadened their mental horizons, they came to join

the economic activities entailed by the industrial revolution.¹⁷ Convention on the Seneca Falls, as pointed out earlier marked the beginning for American Feminist awakening. Added to these reasons, one more, is the political upheavals and revolutions in the U.S.S.R., France, India and China. These led to improved legal rights and economic opportunity. A religious revolution in the form of protestantism did the same.

In America, the movement took place in four phases; First dating 1820 to 1869, when there were no permanent organisations and the issues were varied which include women's right in marriage divorce, property, employment etc. In 1848, when the treaty of Guadalupe Hidalgo brings the South West under United States Law, married women living in the region lose their property rights, and can no longer enter into contracts, sue in court, or operate their own business.¹⁸ During second phase (1869-1890) permanent organizations came into being. The Third phase extended 1890 to 1920. It is not relevant to go in details but some important years of these movements is necessary to bring into consideration as follows:

In 1973: The National Black Feminist Organization is established.

In 1978: Publicity about the Oregon Vs. Rideout decision leads many other states to also follow prosecution for marital and cohabitation rape.

In 1994 : Every couple applying for a marriage license in California is given information about domestic violence.¹⁹

In 1998: The 150th Anniversary of the Women's Right Movement, launched at the World's First Women's Rights Convention in Seneca Falls, New York. Throughout 1998, the tremendous positive changes brought about by the movement were celebrated in offices, schools and communities nationwide in form thousands of events.²⁰

Conclusion :

Feminism is a theoretical perspective and a practice that criticizes social and gender inequalities, seeks to transform knowledge, and aims at woman's empowerment. Women, and not religion should be at the center of that theory and practice. It is hard to defend as feminist the view that women can attain equal status only in the context of the Islam. This is fundamentalist view, not one compatible with feminism. And yet, around the world women will pursue different strategies towards empowerment and transformation. We are still grappling with understanding and theorizing those diverse strategies. In this context, it serves no purpose to insist on a narrow definition of feminism, as accepted by some authors.

But after deep study of growth of feministic movements and Islamic feministic view point it is submitted that these movements helpful to raise the status of women and emancipate women in each and every sphere of her life.

The above study may analysis the way towards a resolution of the debate on Islamic feminism. For if feminism has always been contested, if feminist should defined by their praxis rather than by a strict ideology, and if a feminist politics is shaped by its specific

historical, political and cultural contexts, then it should be possible to identify Islamic feminism as one feminism among many. Indeed, in this view, it is not particularly useful to create absolute boundaries between Islamic feminism, Western feminism, Latin American feminism and so on. As we know Islamic feminism is different from other feminism. Under this women want changes in accordance with Quran and Hadith.

At the end of 20th century and beginning of the 21st century, what is emerging is a global women's movement and a philosophy that draws on the feminist classics but that also reflects the social realities and concern of women in various parts of the world.

To a very great extent, the Beijing platform for action, adopted at the end of the Fourth World Conference on Women in September 1995, is a manifesto of this global women's movements. It describes the problem facing the women of the world and prescribes a set of actions to solve the problems that would involve government, international agencies, non-governmental organizations, and the woman's movement. That the platform for Action was finally agreed upon by governments and women's organizations after considerable disagreements confirms the multi-faceted nature of global feminism and of the capacity of women world wide to overcome ideology and conflict and agree on the measures necessary for women's equality and empowerment.

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Chapter - IV

HUMAN RIGHTS IN ISLAM

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CHAPTER - IV

HUMAN RIGHTS IN ISLAM

Introduction :

Right to life and personal liberty looms very large in the Universal Human Rights Charter. Obviously, the man and woman have been victims of the deprivation of this right for centuries and in many societies these rights is still trampled upon with impunity and brazen brutality. It was but natural for the charter of universal Rights to dwell on all aspects of this right. Several articles of the declaration and both covenants have proclaimed the concern and stipulated for the protection of this right without which all rights dwindle into insignificance.¹

Every religion contains some basic rights these are called as human rights which is essential for every community worldwide. Islam also have some human rights which are enshrined in the Quran in different verses.

1. Impact of Human Rights under Matrimonial Laws:

When there is denial of right, to choice and consent is lacking in the marriage contract, it has been seen that there is denial of human rights. It hampers the rights of the parties while they go for marriage contract. In the era of women emancipation, more emphasis for women education in every constitutional and social legislation is not enough, growing demand of right to equality among both the sexes must. It has been seen that still in Muslim marriage contract there is

clear denial of their human right by waiving her right to choose her life partner as well as also where in the marriage contract her consent is lacking. In this scenario under this chapter we can assess the impact of Human Rights under matrimonial cases.

The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. And it has been seen that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

The splendid sentences from the preamble to the Universal Declaration of Human Rights² states as :

"Whereas the people of United Nations have in the charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standard of life in larger freedom..."

According to Article 16 which specifies the age and importance of consent doctrine during marriage negotiation as :

Article 16 -

1. Men and women of full age, without any limitation due to race, nationality or religion have the right to marry and to found a

family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

This article clearly shown that the consent and right to choice during marriage process is an important pillar for the marriage contract. It need not be over emphasized that the Universal Declaration of Human Rights is the keystone on which U.N. activities for the promotion and observance of Human Rights are based. The Universal Declaration was adopted on 10th Dec., 1948. Hence, 10th December is observed as Human Rights day every year all over the world.³

The Declaration of Human Rights befits those system of philosophy which agree with the Quranic verse :

"By the soul, that which shaped it and inspired it to lewdness and god fearing! and believe that human being is naturally disposed towards virtue". The Declaration of Human Rights content are based on Quranic verses. Human Rights should be that man is built with the intention of travelling towards the destination of :

"O Man ! thou art striving unto thy Lord with a striving, and thou shall encounter him."⁴

In another verse states as :

"We indeed created man in the fairest stature..."⁵ and ... man to have the most harmonious and the most perfect structure.

We also said that whatever laid down in the Universal Declaration of Human Rights in 1948, it was already enshrined in Quran centuries back. In other words we can say that the spirit and foundation of human right is upheld by Islam.

2. Women's Rights are Human Rights :

One United Nations human rights treaty directly addresses the right of women : the convention on the Elimination of All Forms of Discrimination against women. Although the other United Nations human rights treaties explicitly embody equal protection for women, the monitoring of those treaties has tended to overlook female experiences and needs. Dorothy Thomas of Human Rights watch believes that those traditionally in a position to determine what constitutes a human rights abuse have tended to view women's issue as marginal, as private matters happening in the home. But "I think that altitude is changing", she says.

A new partnership is developing between the human rights organizations and women's rights activists. According to Ms. Thomas, the latter have long been trying to get the human rights community to pay attention to the fact that women are being subjected to torture and to cruel and inhuman punishment and discrimination.

If it conferred the saying women's rights are human rights in

relation to domestic violence, then there is need to see the conditions of women human rights under marriage contract negotiations. So far as the domestic violence is concerned that counts post marriage hazards. But in the entire global world nobody has a say when there is curtailment of women's human rights while go for marriage. In the marriage where parents impose their wishes to marry with their parents choice or in other words consent is lacking, there is no right to choice in the hands of women. Can we not say in this picture there is abuse to her human rights. Why parents under the flag of regards or conservative thought impose their wishes ? If we thought over these small issues keenly we will not phase cancer like problems after marriage. today there is need to protect women human rights not in the form of marital violence but as a preventive measure before marriage contract.

Centuries back Islam talks about human rights and now United Nations have generated more intense and widespread support than for the campaign to promote and protect equal rights of women. The Charter of the United Nations was the international agreement to proclaim gender equality as a fundamental principle to proclaim gender equality as a fundamental human rights. Over the years, the organisation has helped to create an historic legacy of internationally agreed strategies, standards, programmes and goals to advance the status of women's human rights worldwide. While progress has been achieved, as the following statistics indicate, much work remains to be done.⁶

3. Status of Women and Human Rights

- Women have not achieved equality with men in any country.
- Of the world's 1.3 billion people, it is estimated nearly 70% are women.
- Between 75 and 80% of the world's 27 million refugees are women and children.
- The fourth World Conference on Women, held in Beijing, China from 4-15 September, 1995, resulted in agreement by 189 delegations on a five year plan to enhance the social, economical and political empowerment of women, improve their health, advance their education and promote their reproductive rights.
- Over 100 countries have announced new initiative to further the advancement of women as a result of the Beijing Women's Conference.
- The 1979 UN convention on the Elimination of All Forms of Discrimination against Women, often described as a Bill of Rights for Women, has now been ratified by 154 countries.

4. Women and Education :

- Of the world's nearly one billion illiterate adults, two-thirds are women.
- Two thirds of the 130 million children worldwide who are not in school are girls.
- During the past two decades the combined primary and secondary enrolment ratio for girls in developing countries increased from 38% to 78%.

5. Women and Violence :

- Each year an estimated two millions girls suffer the practice of female genital mutilation.
- Worldwide, 20 to 50% of women experience some degree of domestic violence during marriage.
- The primary victims of today's armed conflicts are civilian women and their children, not soldiers.
- The use of rape as a weapon of war has become more evident. In Rwanda from April 1994 to April 1995, estimates of the number of women and girls raped range from 15,700 to over 250,000.
- Rapes during recent conflicts in the former Yugoslavia and Rwanda are being investigated with a view to prosecution by International Tribunals established by the United Nations.

6. Women and Health :

- An estimated 20 million unsafe abortions are performed worldwide every year, resulting in the deaths of 70,000 women.
- Globally, 43% of all women and 51%, of pregnant women suffer from iron deficiency anemia.

7. Women and the Economy

- The majority of women earn on average about three fourth of the pay of male for the same work, outside of the agricultural sector, in both developed and developing countries.
- In most countries, women work approximately twice the unpaid time men do.

- Women make up 31% of the official labour force in developing countries and 46.7% worldwide.
- Rural women produce more than 55% of all food grown in developing countries.
- The value of women's unpaid housework and community work is estimated at between 10-35% of GDP worldwide, amounting to \$ 11 billion in 1993.
- by the year 2000, there will be as many women employees as men in many industrialized nations.

Former United Nations Secretary General Boutros Boutros Ghali says :

"Without progress in the situation of women, there can be no true social development. Human rights are not worthy of the name if they exclude the female half of humanity. The struggle for women's equality is part of the struggle for a better world for all human beings, and all societies".

8. United Nations Actions for Women :

United Nations actions for the advancement of women began with the signing of United Nations Charter. In its preamble, the members of the United Nations declared their faith "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of Nations large and small...".

This happened 50 years ago, in october 1945, when the Charter entered into force and the United Nations was formally set up. Since then, the United Nation has been at the centre of a growing

global movement for women's right. By adopting international laws and treaties on women's right, the United Nations has helped to set a common standard for measuring how societies advance equality between men and women.

The Conventions, or international treaties, that the United Nations has adopted are legally binding for countries that recognize them. Among such treaties are :

- The convention on the Political Rights of Women (1952)
- The convention on the Nationality of Married Women (1957)
- The convention on Recovery Abroad of Maintenance (1956)
- The Convention on the Consent to Marriage (1962)
- The convention on the Elimination of all forms of Discrimination against women (1979)

The UN observed 1975 as International Women's Year and held the first World Conference on Women in Mexico City. Subsequently, two other UN conferences were held ;

Copenhagen (1980) and Nairobi (1985). The fourth World Conference of Women will be held in Beijing (China) in September 1995. In Beijing the countries of the world will review the advancement of women in light of three guidelines. They will also adopt a platform for action, addressing the challenges and demands of the next century.

In December 1993, the United Nations adopted the Declaration on the Elimination of violence against Women, which defined what

constitutes violence against women and outlined actions Governments and communities violence against women and outlined actions Governments and communities should take to prevent such acts. Earlier, in June 1993, the World Conference on Human Rights in Vienna, Austria reaffirmed that Women's right are also human rights. One of the outcomes of the conference was the appointment of a special Rapporteur on violence against women. The Rapporteur, who seeks and receives information on violence against women, its causes and consequences, and recommends means and ways to eliminate them, reports to the United Nations Commission on Human Rights.

9. Islamic Approach About Human Rights:

Since God is the absolute and the sole master of men and the universe. He is the sovereign Lord, the Sustainer and Nourisher, the Merciful. Whose mercy enshrine all being; and since He has given each man human dignity and honour, and breathed into him of His own spirit, it follows that, united in Him and through Him, and apart from their other human attributes, men are substantially the same and no tangible and actual distinction can be made among them, on account of their accidental differences such as nationality, colour or race. Every human being is thereby related to all become one community of brotherhood in their honourable and pleasant servitude to the most compassionate Lord of the Universe. In such a heavenly atmosphere the Islamic confession of the oneness of God stands dominant and central, and necessarily entails the concept of the oneness of humanity and the brotherhood of mankind⁷.

Although an Islamic state may be set up in any part of the earth, Islam does not seek to restrict human rights or privileges to the geographical limits of its own state. Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances whether such a person is resident within the territory of the Islamic states or outside it, whether he is at peace or at war. The Quran very clearly states:

"O believers, be you securers of justice, witness for God. Let not detestation for a people move you not to be equitable; be equitable-that is nearer to God-fearing⁸."

Human blood is sacred in any case and can not be spilled without justification. And if anyone violates this sanctity of human blood by killing a soul without justification, the Quran equates it to the killing of entire mankind.

"Whose slays a soul not to retaliate for a soul slain, nor for corruption done in the land, should be as if he had slain mankind altogether.⁹"

It is not permissible to oppress women, children, old people, the sick or the wounded. Women's honour and chastity are to be respected under all circumstance. The hungry person must be fed, the naked clothed and the wounded or diseased treated medically irrespective of whether they belong to the Islamic community or are from among its enemies.

When we speak of human rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative assembly. The rights granted by the kings or the legislative assemblies, can also be withdrawn in the same manner in which they are conferred. The same is the case with the rights accepted and recognized by the dictators. They can confer them when they please and withdraw them when they wish; and they can openly violate them when they like. But since in Islam human rights have been conferred by God, no legislative assembly in the world or any government on earth has the rights or authority to make amendment or change in the rights conferred by God. No one has the rights to abrogate them or withdraw them. Nor they are basic human rights which are conferred on paper for the sake of show and exhibition and denied in actual life when the show is over. Nor are they like philosophical concepts which have no sanctions behind them.

The charter and the proclamations of the United Nations cannot be compared with the rights sanctioned by God; because the former are not applicable on anybody while the latter are applicable on every believer. They are a part and parcel of the Islamic faith. Every Muslim or administrator who claims himself to be Muslim, will have to accept, recognize and enforce them. If they fail to enforce them, and start denying the rights that have been guaranteed by God or make amendments and changes in them, or practically violate them while paying lip service to them, the verdict of the Holy Quran for such government is clear and unequivocal:

"Those who do not judge by what God has sent down are the disbelievers."¹⁰

10. Human Rights in an Islamic state

1. The Security of life and Property:

In the address which the Prophet (SAW) delivered on the occasion of the Farewell Hajj, he said: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection." The Prophet has also said about the dhimmis (the non-Muslim citizens of the Muslim state): "One who kills a man under covenant (i.e., dhimmi) will not even smell the fragrance of paradise."

2. The protection of Honour:

The Holy Quran lays down:

"You who believe, do not let one (set of) people make fun of another set."

"Do not defame one another."

"Do not insult by using nicknames."

"Do not backbite or speak ill of one another."¹¹

3. Sanctity And Security Of Private Life :

The Quran has laid down the injunction :

"Do not spy on one another"¹²

"Do not enter any houses unless you are sure of their occupant's consent".¹³

4. The Security of Personal Freedom :

Islam has laid down the principle that no citizen can be imprisoned unless his guilt has been proven in an open court. To arrest a man only on the basis of suspicion and to throw him into a

prison without proper court proceedings and without providing him a reasonable opportunity to produce his defence is not permissible in Islam.

5. The Right to Protest Against Tyranny :

Among the rights that Islam has conferred on human beings is the right to protest against government's tyranny. Referring to it the Quran says:

"God does not love evil talk in public unless it is by someone who has been injured thereby¹⁴.

In Islam, as has been argued earlier, all power and authority belong to God, and with man there is only delegated power which becomes a trust; everyone who becomes a recipient of such a power has to stand in awful reverence before his people toward whom and for whose sake he will be called upon to use these powers. This was acknowledged by Hazrat Abu Bakr who said in his very first address: *"Cooperate with me when I am right but correct me when I commit error; obey me so long as I follow the commandments of Allah and His Prophet (SAW); but turn away from me when I deviate."*

6. Freedom of Expression :

Islam gives the right of freedom of thought and expression to all citizens of the Islamic state on the condition that it should be used for the propagation of virtue and truth and not for spreading evil and wickedness. The Islamic concept of freedom of expression is much superior to the concept prevalent in the West. Under no circumstances

would Islam allow evil and wickedness to be propagated. It also does not give anybody the right to use abusive or offensive language in the name of criticism. It was the practice of the Muslims to enquire from the Holy Prophet (SAW) whether on a certain matter a divine injunction had been revealed to him. If he said that he had received no divine injunction, the Muslims freely expressed their opinion on the matter.

7. Freedom of Association :

Islam has also given people the right to freedom of association and formation of parties or organizations. This right is also subject to certain general rules.

8. Freedom of Conscience And Conviction :

Islam has laid down the injunction :

"There should be no coercion in the matter of faith."¹⁵

On the contrary, totalitarian societies totally deprive the individuals of their freedom. Indeed, this undue exaltation of the state authority curiously enough postulates a sort of servitude, of slavishness on the part of man. At one time slavery meant total control of man over man-now that type of slavery has been legally abolished but in its place totalitarian societies impose a similar sort of control over individuals.

9. Protection of Religious Sentiments :

Along with the freedom of conviction and freedom of conscience, Islam has given the right to the individual that his

religious sentiments will be given due respect and nothing will be said or done which may encroach upon his right.

10. Protection from Arbitrary Imprisonment :

Islam also recognizes the right of the individual not to be arrested or imprisoned for the offenses of others. The Holy Quran has laid down this principle clearly

"No bearer of burdens shall be made to bear the burden of another¹⁶"

11. The Right To Basic Necessities of Life :

Islam has recognized the right of the needy people for help and assistance to be provided to them:

"And in their wealth there is acknowledged right for the needy and the destitute.¹⁷"

12. Equality Before Law :

A woman belonging to a high and noble family was arrested in connection with theft. The case was brought to the Prophet (SAW), and it was recommended that she might be spared the punishment of theft. The Prophet replied: *"The nations that lived before you were destroyed by God because they punished the common man for their offenses and let their dignitaries go unpunished for their crimes; I swear by Him Who holds my life in His hand that even if Fatima, the daughter of Muhammad, had committed this crime, I would have amputated her hand."*

14. The Right to Participate in the Affairs of State :

"And their business is (conducted) through consultation among themselves.¹⁸"

The "Shura" or the legislative assembly has no other meaning except that the executive head of the government and the members of the assembly should be elected by free and independent choice of the people.

Lastly, it is to be made clear that Islam tries to achieve the above mentioned human rights and many others not only by providing certain legal safeguards but mainly by inviting mankind to transcend the lower level of animal life to be able to go beyond the mere ties fostered by the kinship of blood, racial superiority, linguistic arrogance, and economic privileges. It invites mankind to move on to a plane of existence where, by reason of his inner excellence, man can realize the ideal of the Brotherhood of man.

11. Western Approach and Islamic Approach : A Comparison

I. The Western Approach :

The people in the West have the habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely unaware of all these benefits. Now let us look at the question of human rights. It is very loudly and vociferously claimed that the world got the concept of basic human rights from the Magna Carta of Britain; though the Magna Carta itself

came into existence six hundred years after the advent of Islam. But the truth of the matter is that until the seventeenth century no one even knew that the Magna Carta contained the principles of Trial by Jury; Habeas Corpus, and the Control of Parliament on the Right of Taxation. If the people who had drafted the Magna Carta were living today they would have been greatly surprised if they were told that their document also contained all these ideals and principles. They had no such intention, nor were they conscious of all these concepts which are now being attributed to them.¹⁹

As far as my knowledge goes the Westerners had no concept of human rights and civic rights before the seventeenth century. Even after the seventeenth century the philosophers and the thinkers on jurisprudence though presented these ideas, the practical proof and demonstration of these concepts can only be found at the end of the eighteenth century in the proclamations and constitutions of America and France. After this there appeared a reference to the basic human rights in the constitutions of different countries. But more often the rights which were given on paper were not actually given to the people in real life.

In the middle of the present century, the United Nations, which can now be more aptly and truly described as the Divided Nations, made a Universal Declaration of Human Rights, and passed a resolution against genocide and framed regulations to check it. But as you all know there is not a single resolution or regulation of the United Nations which can be enforced. They are just an expression of

a pious hope. They have no sanctions behind them, no force, physical or moral to enforce them. Despite all the high-sounding ambitious resolutions of the United Nations, human rights have been violated and trampled upon at different places, and the United Nations has been a helpless spectator. She is not in a position to exercise an effective check on the violation of human rights. Even the heinous crime of genocide is being perpetrated despite all proclamations of the United Nations. Right in the neighbouring country of Pakistan, genocide of the Muslims has been taking place for the last twenty eight years, but the United Nations does not have the power and strength to take any steps against India. No action has even been taken against any country guilty of this most serious and revolting crime.²⁰

II The Islamic Approach :

The second point which researcher would like to clarify at the very outset is that when we speak of human rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative assembly. The rights granted by the kings or the legislative assemblies, can also be withdrawn in the same manner in which they are conferred. The same is the case with the rights accepted and recognized by the dictators. They can confer them when they please and withdraw them when they wish; and they can openly violate them when they like. But since in Islam human rights have been conferred by God, no legislative assembly in the world, or any government on earth has the right or

authority to make any amendment or change in the rights conferred by God. No one has the right to abrogate them or withdraw them. Nor are they, the basic human rights which are conferred on paper for the sake of show and exhibition and denied in actual life when the show is over. Nor are they like philosophical concepts which have no sanctions behind them.

The charter and the proclamations and the resolutions of the United Nations cannot be compared with the rights sanctioned by God; because the former is not applicable to anybody while the latter is applicable to every believer. They are a part and parcel of the Islamic Faith. Every Muslim or administrators who claim themselves to be Muslims will have to accept, recognize and enforce them. If they fail to enforce them, and start denying the rights that have been guaranteed by God or make amendments and changes in them, or practically violate them while paying lip-service to them, the verdict of the Holy Quran for such governments is clear and unequivocal :

"Those who do not judge by what God has sent down are the disbelievers" (Kaffirun).²¹

The following verse also proclaims: "They are the wrong-doers (zalimun)²²" while a third verse in the same chapter says: "They are the evil livers (fasiqun)"²³

In other words this means that if the temporal authorities regard their own words and decisions to be right and those given by God as wrong they are disbelievers. If on the other hand they regard God's commands as right but wittingly reject them and enforce their

own decisions against God's, then they are the mischief-makers and the wrong-doers. Fasiq, the law-breaker, is the one who disregards the bond of allegiance, and zalim is he who works against the truth. Thus all those temporal authorities who claim to be Muslims and yet violate the rights sanctioned by God belong to one of these two categories, either they are the disbelievers or are the wrong-doers and mischief-makers. The rights which have been sanctioned by God are permanent, perpetual and eternal. They are not subject to any alterations or modifications, and there is no scope for any change or abrogation.

Contents of the Basic Human Rights as follows :

1. The Right to Life 2. The Right to the Safety of Life, 3. Respect for the Chastity of Women, 4. The Right to a Basic Standard of Life, 5. Individual's Right to Freedom, 6. The Right to Justice, 7. Equality of Human Beings, 8. The Right to Co-operate and Not to Co-operate.

12. BASIC HUMAN RIGHTS IN ISLAM:

A description according to Allam Abu al - Ala Mawdudi, he has envisaged following basic human rights as enshrined in Quran:

The first thing that we find in Islam in this connection is that it lays down some rights for man as a human being. In other words it means that every man whether he belongs to this country or that, whether he is a believer or unbeliever, whether he lives in some forest or is found in some desert, whatever be the case, he has some basic human rights simply because he is a human being, which should be recognized by every Muslim. In fact it will be his duty to fulfil these

obligations.²⁴

1. The Right to Life

The first and the foremost basic right is the right to live and respect human life. The Holy Quran lays down: "Whosoever kills a human being without (any reason like) man slaughter, or corruption on earth, it is as though he had killed all mankind ... "²⁵

As far as the question of taking life in retaliation for murder or the question of punishment for spreading corruption on this earth is concerned, it can be decided only by a proper and competent court of law. If there is any war with any nation or country, it can be decided only by a properly established government. In any case, no human being has any right by himself to take human life in retaliation or for causing mischief on this earth. Therefore it is incumbent on every human being that under no circumstances should he be guilty of taking a human life. If anyone has murdered a human being, it is as if he has slain the entire human race. These instructions have been repeated in the Holy Quran in another place saying :

"Do not kill a soul which Allah has made sacred except through the due process of law..."²⁶ .

Here also homicide has been distinguished from destruction of life carried out in pursuit of justice. Only a proper and competent court will be able to decide whether or not an individual has forfeited his right to life by disregarding the right to life and peace of other human beings. The Prophet (SAW), may God's blessings be on him, has declared homicide as the greatest sin only next to polytheism.

The Tradition of the Prophet (SAW) reads : "The greatest sins are to associate something with God and to kill human beings". In all these verses of the Quran and the Traditions of the Prophet (SAW) the word 'soul' (nafs) has been used in general terms without any distinction or particularization which might have lent itself to the elucidation that the persons belonging to one's nation, the citizens of one's country, the people of a particular race or religion should not be killed. The injunction applies to all human beings and the destruction of human life in itself has been prohibited.

'The Right to Life' has been given to man only by Islam. You will observe that the people who talk about human rights if they have ever mentioned them in their Constitutions or Declarations, then it is clearly implied in them that these rights are applicable only to their citizens or they have been framed for the white race alone. This can clearly be gleaned by the fact that human beings were hunted down like animals in Australia and the land was cleared of the aborigines for the white man. Similarly the aboriginal population of America was systematically destroyed and the Red Indians who somehow survived this genocide were confined to specified areas called Reservations. They also penetrated into Africa and hunted down human beings like wild animals. All these instances go to prove that they have no respect for human life as such and if they have, it is only on the basis of their nationality, colour or race. Contrary to this, Islam recognizes this right for all human beings. If a man belongs to a primitive or savage tribe, even then Islam regards him as a human being.

2. The Right to the Safety of Life

Immediately after the verse of the Holy Quran which has been mentioned in connection with the right to life, God has said : "And whoever saves a life it is as though he had saved the lives of all mankind".²⁷ A man may be ill or wounded, irrespective of his nationality, race or colour. If you know that he is in need of your help, then it is your duty that you should arrange for his treatment for disease or wound. If he is dying of starvation, then it is your duty to feed him so that he can ward off death. If he is drowning or his life is at stake, then it is your duty to save him. You will be surprised to hear that the Talmud, the religious book of the Jews, contains a verse of similar nature, but records it in altogether different form. It says : "Whoever destroyed a life of the Israelite, in the eyes of the Scripture, it is as if he destroyed the whole world. And whoever protected and saved one life of the Israelite, in the light of the Scripture, it is as if he saved the whole world". Talmud also contains the view that if a non-Israelite is drowning and you tried to save him then you are a sinner. Can it be given a name other than racialism? We regard it as our duty to save every human life, because it is thus that we have been enjoined in the Holy Quran. On the other hand, if they regard it necessary to save the life of a human being at all, it should be the life of an Israelite. As far as other people are concerned, according to this view, they do not seem to be human enough to deserve protection of their persons. In their literature the concept of 'Goyim' for which the English word 'Gentile' and the Arabic word ummi (illiterate) is used, is that they enjoy no human rights; human

rights are reserved only for the children of Israel. The Quran has mentioned this belief of the Israelites and quotes the Jews saying : "There is no blame on us (for anything we may do) with regard to the unlettered folk (i.e. the ummi)".²⁸

3. Respect for the Chastity of Women

The third important thing that we find in the Charter of Human Rights granted by Islam is that a woman's chastity has to be respected and protected under all circumstances, whether she belongs to our own nation or to the nation of an enemy, whether we find her in the wild forest or in a conquered city; whether she is our co-religionist or belongs to some other religion or has no religion at all. A Muslim cannot outrage her under any circumstances. All promiscuous relationship has been forbidden to him, irrespective of the status or position of the woman, whether the woman is a willing or an unwilling partner to the act. The words of the Holy Quran in this respect are : "Do not approach (the bounds of) adultery".²⁹ Heavy punishment has been prescribed for this crime, and the order has not been qualified by any conditions. Since the violation of chastity of a woman is forbidden in Islam, a Muslim who perpetrates this crime can not escape punishment whether he receives it in this world or in the Hereafter. This concept of sanctity of chastity and protection of women can be found nowhere else except in Islam. The armies of the Western powers need the daughters of their nation to satisfy their carnal appetites even in their own countries, and if they happen to occupy another country, the fate of its women folk can better be

imagined than described. But the history of the Muslims, apart from a few lapses of the individuals here or there, has been free from this crime against womanhood. It has never happened that after the conquest of a foreign country the Muslim army has gone about raping the women of the conquered people, or in their own country, the government has arranged to provide prostitutes for them. This is also a great blessing which the human race has received through Islam. and Islam will not curtail Women human rights in any form.³⁰

4. The Right to a Basic Standard of Life

Speaking about the economic rights the Holy Quran enjoins upon its followers :

And in their wealth there is acknowledged right for the needy and destitute.³¹

The words of this injunction show that it is a categorical and unqualified order. Furthermore this injunction was given in Makkah where there was no Muslim society in existence and where generally the Muslims had to come in contact with the population of the disbelievers. Therefore the clear meaning of this verse is that anyone who asks for help and anyone who is suffering from deprivation has a right in the property and wealth of the Muslims; irrespective of the fact whether he belongs to this nation or to that nation, to this country or to that country, to this race or to that race. If you are in a position to help and a needy person asks you for help or if you come to know that he is in need, then it is your duty to help him. God has established his right over you, which you have to honour as a Muslim.

5. Individual's Right to Freedom

Islam has clearly and categorically forbidden the primitive practice of capturing a free man, to make him a slave or to sell him into slavery. On this point the clear and unequivocal words of the Prophet (SAW) are as follows : "There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgement. Of these three, one is he who enslaves a free man, then sells him and eats this money'.³² The words of this Tradition of the Prophet (SAW) are also general, they have not been qualified or made applicable to a particular nation, race, country or followers of a particular religion. The Europeans take great pride in claiming that they abolished slavery from the world, though they had the decency to do so only in the middle of the last century. Before this, these Western powers had been raiding Africa on a very large scale, capturing their free men, putting them in bondage and transporting them to their new colonies. The treatment which they have meted out to these unfortunate people has been worse than the treatment given to animals. The books written by the Western people themselves bear testimony to this fact.

6. The Right to Justice

This is a very important and valuable right which Islam has given to man as a human being. The Holy Qurah has laid down: "Do not let your hatred of a people incite you to aggression".³³ "And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness".³⁴ Stressing this point the Quran again says : "You who believe stand steadfast before

God as witness for (truth and) fairplay".³⁵ This makes the point clear that Muslims have to be just not only with ordinary human beings but even with their enemies. In other words, the justice to which Islam invites her followers is not limited only to the citizens of their own country, or the people of their own tribe, nation or race, or the Muslim community as a whole, but it is meant for all the human beings of the world. Muslim therefore, cannot be unjust to anyone. Their permanent habit and character should be such that no man should ever fear injustice at their hands, and they should treat every human being everywhere with justice and fairness.

7. Equality of Human Beings

Islam not only recognizes absolute equality between men irrespective of any distinction of colour, race or nationality, but makes it an important and significant principle, a reality. The Almighty God has laid down in the Holy Quran: "O mankind, we have created you from a male and female." In other words all human beings are brothers to one another. They all are the descendants from one father and one mother. "And we set you up as nations and tribes so that you may be able to recognize each other." This means that the division of human beings into nations, races, groups and tribes is for the sake of distinction, so that people of one race or tribe may meet and be acquainted with the people belonging to another race or tribe and cooperate with one another. This division of the human race is neither meant for one nation to take pride in its superiority over others nor is it meant for one nation to treat another with contempt or disgrace,

or regard them as a mean and degraded race and usurp their rights. "Indeed, the noblest among you before God are the most heedful of you."³⁶ In other words the superiority of one man over another is only on the basis of God-consciousness, purity of character and high morals, and not on the basis of colour, race, language or nationality, and even this superiority based on piety and pure conduct does not justify that such people should play lord or assume airs of superiority over other human beings. Assuming airs of superiority is in itself a reprehensible vice which no God-fearing and pious man can ever dream of perpetrating. Nor does the righteous have more privileged rights over others, because this runs counter to human equality, which has been laid down in the beginning of this verse as a general principle. From the moral point of view, goodness and virtue is in all cases better than vice and evil.

This has been exemplified by the Prophet (SAW) in one of his sayings thus: "No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam, and Adam was created from clay" (al-Bayhaqi and al-bazzaz). In this manner Islam established equality for the entire human race and struck at the very root of all distinctions based on colour, race, language or nationality. According to Islam, God has given man this of equality as a birth right. Therefore no man should be discriminated against on the ground of the colour of his skin, his place of birth, the race or the nation in which he was born.

13. The United Nations on the Rights of Women Declaration:³⁷

Under the declaration United Nations emphasize the feeling of respect, equality, Kindness and humanity towards Mankind so there is need to know about the contents of this declaration as follows:

*** Article 6 --**

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law...

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife , and in particular:

(a) Women shall have the same right as men as to free choice of a spouse and to enter into marriage rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount.

(b) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 7 -- All provisions of penal codes which constitute discrimination against women shall be repealed.

Article 8 -- All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

Article 9 -- All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels...

Article 10 --

1. All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in the field of economic and social life...

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

Article 11 -

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the

principles of the Charter of the United Nations and of the Universal Declaration of Human rights.

2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

So it can be easily inferred from the above declaration during marriage negotiations paramount considerations are women shall have rights as men as to free choice of a shouse, she should be major and have cosent is essential. This decorum should be maintained in all the contitions.

14. Universal Islamic Declaration of Human Rights³⁸

Objective of this Declaration:

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation oppression and injustice.

Human rights in Islam are firmly rooted in the belife that God, and God alone, is the law Giver and the Source of all human rights. Due to their Divine origin, no ruler,government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the

framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and arousing the conscience of more and more people throughout the world.

This Declaration of Human Rights will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This Declaration of Human Rights is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th century of the Islamic era, the first being the Universal Islamic Declaration announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and Message, held in London from 12to15April 1980.

The Universal Islamic Declaration of Human Rights is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, Jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

This is a declaration of mankind, a guidance and instruction to those who fear God.³⁹

O men! Behold, we have created you all out of a male and a female, and have made you into nations and tribes, so that you

might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-know, all aware.⁴⁰

Preamble enshined as :

WHEREAS the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;.....

Whereas Allah (God) has given mankind through his revelations in the Holy Quran and the Sunnah of the Blessed Prophet Muhammad (SAW) an abiding legal and moral framework within which to establish and regulate human institution and relationships.

WHEREAS the human rights decreed by the Divine Law aim at conferring dignitv and honour on mankind and are designed to eliminate oppression and injustice;"

Brief points under this Declaration:

Article I. Right to Life

a) Human life is sacred and inviolable and every effort shall be made to protect it. In paritcular no one shall be exposed to injury or death, except under the authority of the Law.

b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

Article XIX. Right to Found a Family and Related Matters

- a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.
- b) Each of the partners in a marriage is entitled to respect and consideration from the other.
- c) Every husband is obligated to maintain his wife and children according to his means.
- d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.
- e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.
- f) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.
- g) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (Ummah).

- h) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.
- i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

Article XX. Rights of Married Women

Every married woman is entitled to:

- a) live in the house in which her husband lives;
- b) receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (iddah) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;
- c) seek and obtain dissolution of marriage (Khul'a) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.
- d) inherit from her husband, her parents, her children and other relatives according to the Law;
- e) strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her

interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

Article XXI. Right to Education

- a) Every person is entitled to receive education in accordance with his natural capabilities.
- b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

Article XXII. Right of Privacy

Every person is entitled to the protection of his privacy.

Article XXIII. Right to Freedom of Movement and Residence

- a) In view of the fact that the World of Islam is veritably *Ummah Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.
- b) No one shall be forced to leave the country of his residence, or be arbitrarily deported there from without recourse to due process of Law.

Conclusion

After detailed study about Human Rights impact on family laws it is crystal cleared that Islam is the first religion which provides human rights to mankind. Than Universal Declaration of Human Rights and Universal Islamic Declaration of Women Rights further elaborated the human rights jurisprudence.

Although women constitute a majority of the world population, there is still no society except Islamic society in which women enjoyed full equality and freedom with men.

The international women's human rights movement functioned as the antidote to government complacency and lack of commitment. In every arena, women's human rights activists challenged government's cursory commitment to women's human rights. In an ongoing campaign by women's human right activists highlight the particular insecurity of women into marriage contract, during marriage and after marriage as well as 14 times of armed conflict. These activists explored the intersection between race, ethnicity, or religion and gender and the impact of this intersection on women's ability to enjoy human rights and fundamental freedoms. Women often experienced violation of their rights based on them race as well as on their sex. In most of the countries, violated women's right to enter into marriage contract with their free and full consent as well as their right to dissolve a marriage. Even judgement related to women's issue is not always in consonance with their welfare.

Human Rights NGOs in Muslim countries are struggling valiantly to advance the cause of human rights, and they should be able to make more progress, since human rights law addresses precisely the kinds of repression, abuses, deprivations and discrimination from which people in Muslim countries sufferings due to phoneticism. Now people will realise soon that human rights are not merely the tools of hegemonic agendas of the government.

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Chapter - V

**NEGOTIATING IN MARRIAGE CONTRACT
: AN EMPIRICAL STUDY**

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Chapter - V

NEGOTIATING IN MARRIAGE CONTRACT : AN EMPIRICAL STUDY

Introduction :

For the first time Islam, vindicated the rights of women and gave them a status unknown, unthought of even to this day. The practice of infanticide was abandoned. Women as well as men were urged to acquire learning. They were granted all the fundamental rights. They were given the rights of inheritance of the property of their father, mother, husband and brother. As regards marriage and divorce, they have got fair liberty. Islam has removed various domestic and conjugal hardships of the women by prohibiting the unlimited polygamy prevalent in those days. In short, Islam has made adequate provision for preparing the women as equal partner of men. There is no other religion in the world that favours women so much as Islam.

Islam considers marriage as a social contract between two consenting adults. Muslim Personal law, deems it to be a contract that any man or woman enter into, after puberty for the object of procreation and legalization of children.

The characterisation of marriage as a social contract is to give marriage a certain flexibility, to ensure that it is free of moral connotations; in the sense that marriage is not to be the kind of institution that disallows for individual freedom if it fails. For

women, in particular, the breakdown of a marriage does not bring a personal stigma, at the level of the larger society.

Being a contract, any kind of conditions can be made from either side, which are deemed to be binding on both as long as marriage exists. Consent therefore, becomes vital to marriage, because the persons entering should be fully aware of all that it implies. But according to the hypotheses of this study girl consent in marriage was not generally thought to be necessary and she was obliged to submit to herself the wishes of her parents, though Quran and sunnah provides this right to her. As such a conceptualisation of marriage centres around principles of justice so both the persons who are choosing to enter into relationship of intimacy and parenthood. Another significant principle that it devolves around is the absence of coercion on any individual wishing to marry and procreate, in the conscious and informed choice of the individuals concerned.

The study of Quran, hadiths, existing literature on Muslim marriage negotiations, judicial pronouncement, survey of Muslim women and also interviews by some Muslim women intellectuals and by Islamic scholars revealed certain factors which are responsible for a sharp contrast in practice of Marriage negotiations. These factors are:

1. Illiteracy,
2. Lack of religious education

3. Gulf between theory and in the practice of laws.
4. Parents interference during marriage negotiations.
5. Consent is an important aspect of marriage while there may be indirect coercion (as girl is obliged to submit her wishes for her parents,
6. No separate Muslim matrimonial code,
7. Registration of marriage is not compulsory.
8. Women are not aware with their legal rights,
9. Role of Muslim Personal law board is not satisfactory.

In order to test these factors are really responsible, a survey 500 women were conducted in Aligarh District. To complete this study interviews with some intellectual women and with Islamic scholars, jamat personnels and with Qazi were also conducted. One questionnaire schedule and one interview schedule were prepared which form the part of the study and were administered to the respondents (women only) through randomly sampling, namely; House wives, lawyers, office employees, teachers, and home based workers and the responses received, are given at appropriate places.

This chapter deal with the analysis and interpretation of data which the researcher has collected herself using statistical package for social studies (SPSS). Lastly tabulated all the data statistically by simple percentage method on attitude scale after computing it minutely and discussed at appropriate places. A

detailed description of aggregate results of 500 respondents and related information is presented in the annexures.

1. PRESENTATION AND ANALYSIS OF THE DATA

A. Literacy Among Muslim Women

In the following parts presentation of comprehensive data on different aspects of the lives of Muslim women, women's education, women's education of her family members, economic status of the parties, religious practice, Negotiations before Marriage, standard nikah nama women and its awareness, choice and its importance of the consent doctrine, role of Muslim Personal law board and Indian judiciary and lastly general views on different issues and influence of all these factors on marriage negotiations has been discussed and interpreted in this chapter.

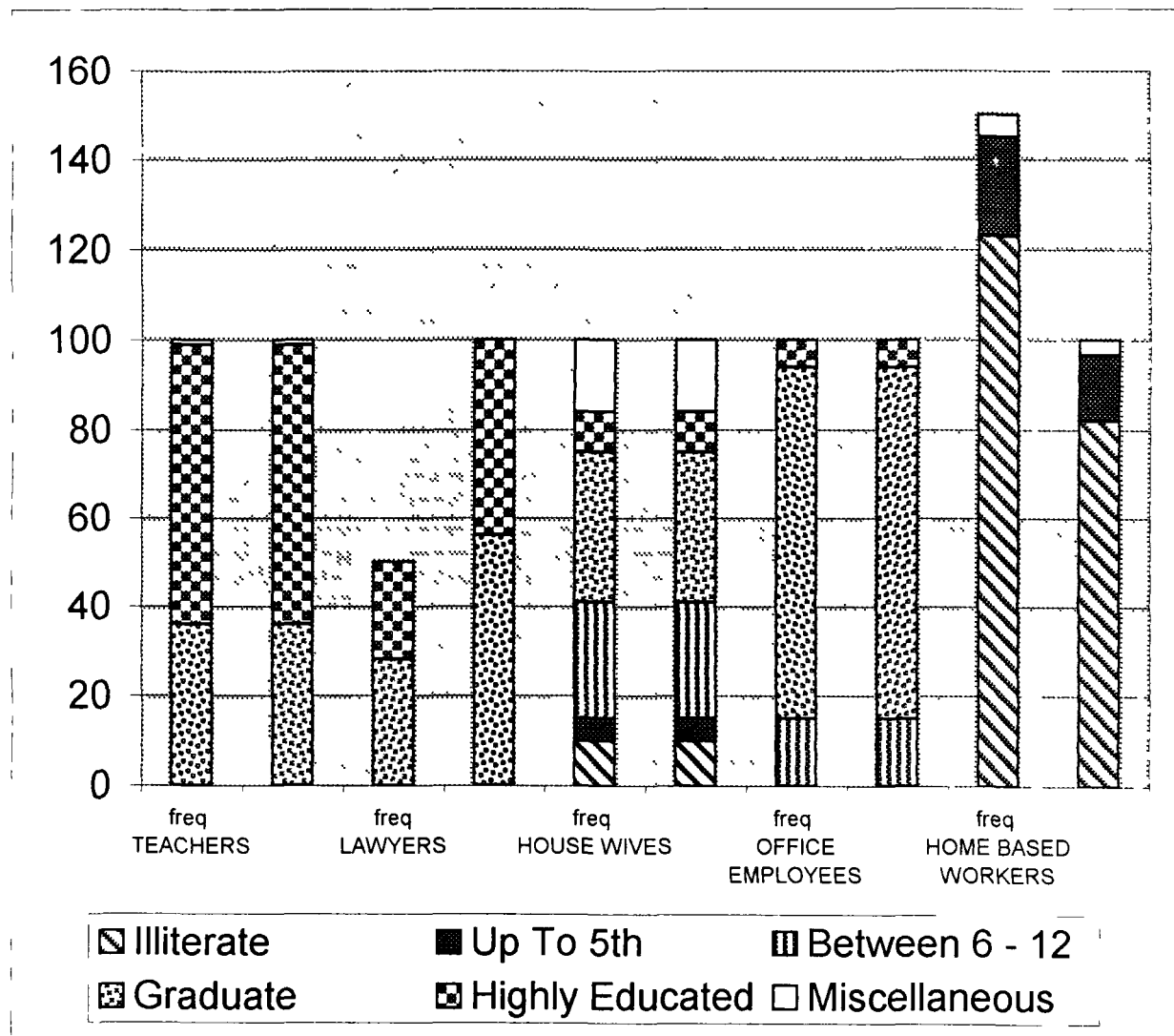
B. Level of Education

In the simpler societies the parents passed on to their children the various skills any knowledge acquired by them in their life time. In the complex societies, this type of training has been replaced by were formal systems and institution, through which education is imparted to children. Education imparted to this manner makes the children knowledgeable about the world in general, and it also adds to their faculties the new ideas and proposal, necessary for their future living.

EDUCATION OF THE RESPONDENT : SELF

TABLE 1 1

		LEVEL OF EDUCATION									
ITEM NO	LEVEL	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Illiterate	0	0	0	0	10	10	0	0	123	82
2	Up To 5th	0	0	0	0	5	5	0	0	22	14 67
3	Between 6 - 12	0	0	0	0	26	26	15	15	0	0
4	Graduate	36	36	28	56	34	34	79	79	0	0
5	Highly Educated	63	63	22	44	9	9	6	6	0	0
6	Miscellaneous	1	1	0	0	16	16	0	0	5	3 33
	TOTAL	100	100	50	100	100	100	100	100	150	100



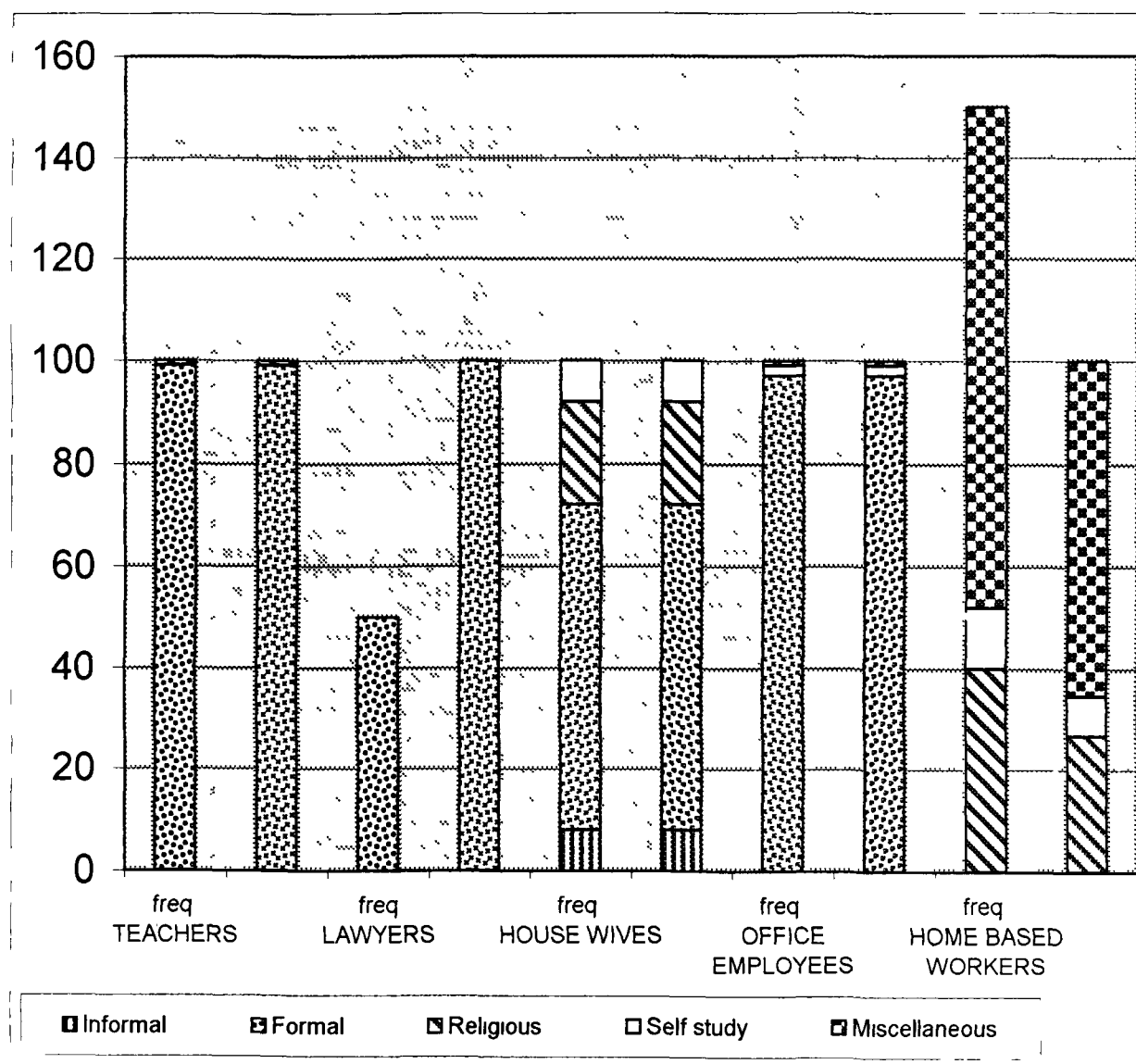
I. Educational Status of the Parties :

Amongst the Muslims the holy book Quran as highly revered, education commences with the reading of Quran religious education gets priority in the life of Muslim. In the sphere of education reading of the religious scriptures is the first landmark in the life of Muslim. Education amongst Muslim women has been treated under two heads, that of religious education and of formal education. Religious education refers to reading of Quran. Formal education means education taken from school and from colleges. All the facts and figures are given regarding the type of education received or not received by women and its reasons. The external and internal factors enhancing or curbing education of the girls have also been noted. Lastly, attitude of women towards education of the girls have also been noted. Lastly, attitude of women towards education and the difference in this aspirational pattern and achievement in life has been discussed. Finally, conclusions are drawn about the various implication of education in the Muslim. Social set up.

Table 1.1, shows the literacy amongst teachers as this category lies under graduate and above graduate levels. Under graduates category literacy level is 36% and under above graduates category literacy rate is 63 % from the total frequency. Under lawyers class literacy rate at graduate level is 56 % and above graduate level is 44%, respectively from total frequency of 50.

TABLE 1 2

		TYPE OF EDUCATION									
ITEM NO	TYPE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Informal	0	0	0	0	8	8	0	0	0	0
2	Formal	99	99	50	100	64	64	97	97	0	0
3	Religious	1	1	0	0	20	20	0	0	40	26 67
4	Self study	0	0	0	0	8	8	2	2	12	8
5	Miscellaneous	0	0	0	0	0	0	1	1	98	65 33
TOTAL		100	100	50	100	100	100	100	100	150	100



Literacy rate under house wives varies from illiterate class to highly educated class. Illiterate counts 10%. Upto Vth it counts 5% between 6-12 it counts 26% under graduate class it counts 34% and lastly highly educated class it counts 9%. In office employees literacy rate lies under three categories as in 6-12 class counts 15%, under graduates counts 79% and in highly graduates it is 6% respectively. The interpretation of table No. 1.1 shows that amongst these four class women have education but their frequency varies from 5th class to highly educated class.

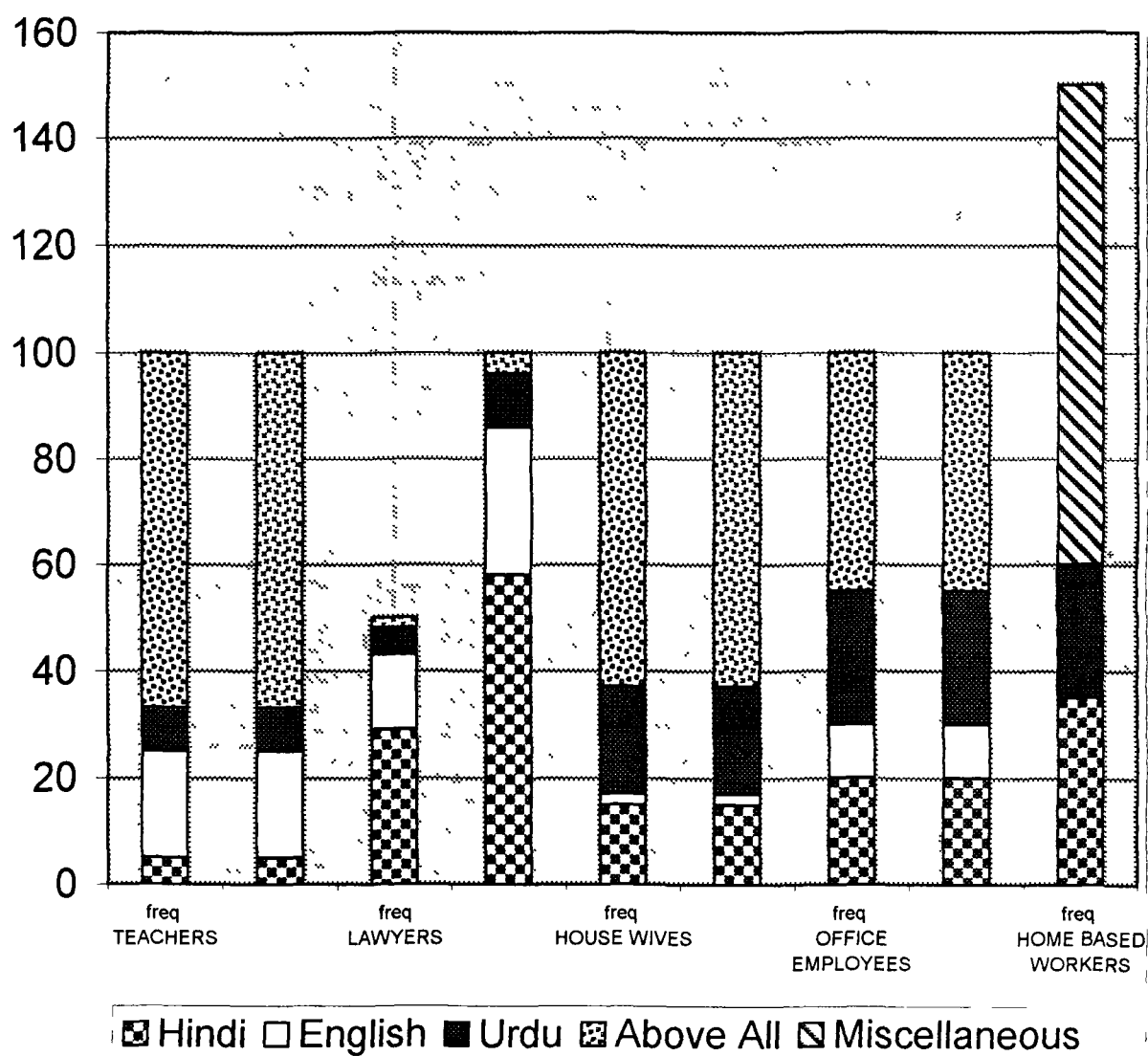
Under home based workers we have analysed that they people are not totally illiterate but they have studied upto 5th classes Which is contrary to the presumption that they are totally illiterate. They are illiterate upto 82%. and educated upto 5th class which counts 14.6%.

Table 1.2, indicates that under teachers, lawyers and office employees higher rate of formal education in comparison to housewives and home based workers. This table shows teachers category takes formal education and it counts 99%. and rest 1% takes religious education. Under lawyers class 100%. Lawyers category comes under formal education or total illiterate class. Similarly in office employees this counts 97% employees have formal education and self study counts 2%. In housewives position is totally different they are taking informal education 8%, formal education 64%, religious education 20%. and self study counts 8%.

TABLE 1.3

LANGUAGE : READ

ITEM NO	LANGUAGE READ	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Hindi	5	5	29	58	15	15	20	20	35	23 33
2	English	20	20	14	28	2	2	10	10	0	0
3	Urdu	8	8	5	10	20	20	25	25	25	16 67
4	Above All	67	67	2	4	63	63	45	45	0	0
5	Miscellaneous	0	0	0	0	0	0	0	0	90	60
	TOTAL	100	100	50	100	100	100	100	100	150	100



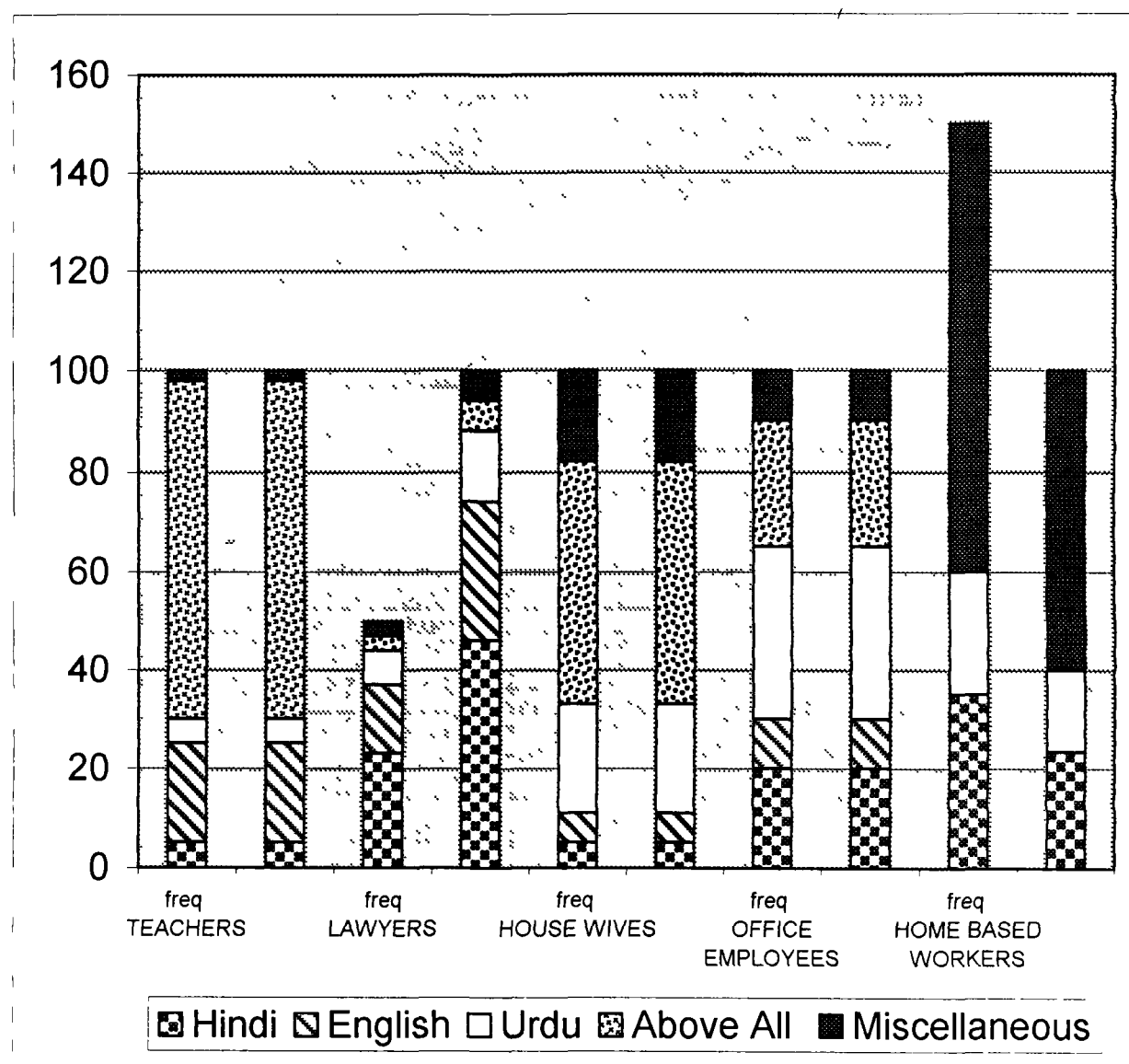
In the home-based worker popular education type is religious education which is 26.6% and self study 8% from the total frequency. Thus we can interpret that despite labour work they have some type of education. Many of them could not study due to economic reason and their social environment. Lastly thus we can interpret from that in Aligarh district majority of women lies under educated class.

Table 1.3, indicates the responses with regard to language but no clear trend is available. Here people read Urdu as their local language. Under teachers majority of them all the three popular languages viz., Urdu, Hindi, English are popular and this counts as 67%. Responses for other option counts as for Hindi, 5%, English 20% and Urdu 8%. There popular trend in regard to language preference not in equal footing. It varies from one another. So we can interpret that in fact that a large number of women read Urdu this can be attributed to the fact that Muslim children have Urdu culture since their childhood. Under lawyers category the trend with regard to language reading is count as 58%, English 28%, 10% Urdu, and 4% under those are read above all three languages. The reason behind above mentioned preferences is that, their court work is in Hindi language so they were used to write in Hindi in comparison to other languages. The trend under office employees category counts as 20% read Hindi, 10% English, 25% Urdu and those are read above all three languages counts as 45% under the total frequency.

TABLE 14

LANGUAGE : WRITE

ITEM NO	LANGUAGE WRITE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Hindi	5	5	23	46	5	5	20	20	35	23 33
2	English	20	20	14	28	6	6	10	10	0	0
3	Urdu	5	5	7	14	22	22	35	35	25	16 67
4	Above All	68	68	3	6	49	49	25	25	0	0
5	Miscellaneous	2	2	3	6	18	18	10	10	90	60
	TOTAL	100	100	50	100	100	100	100	100	150	100



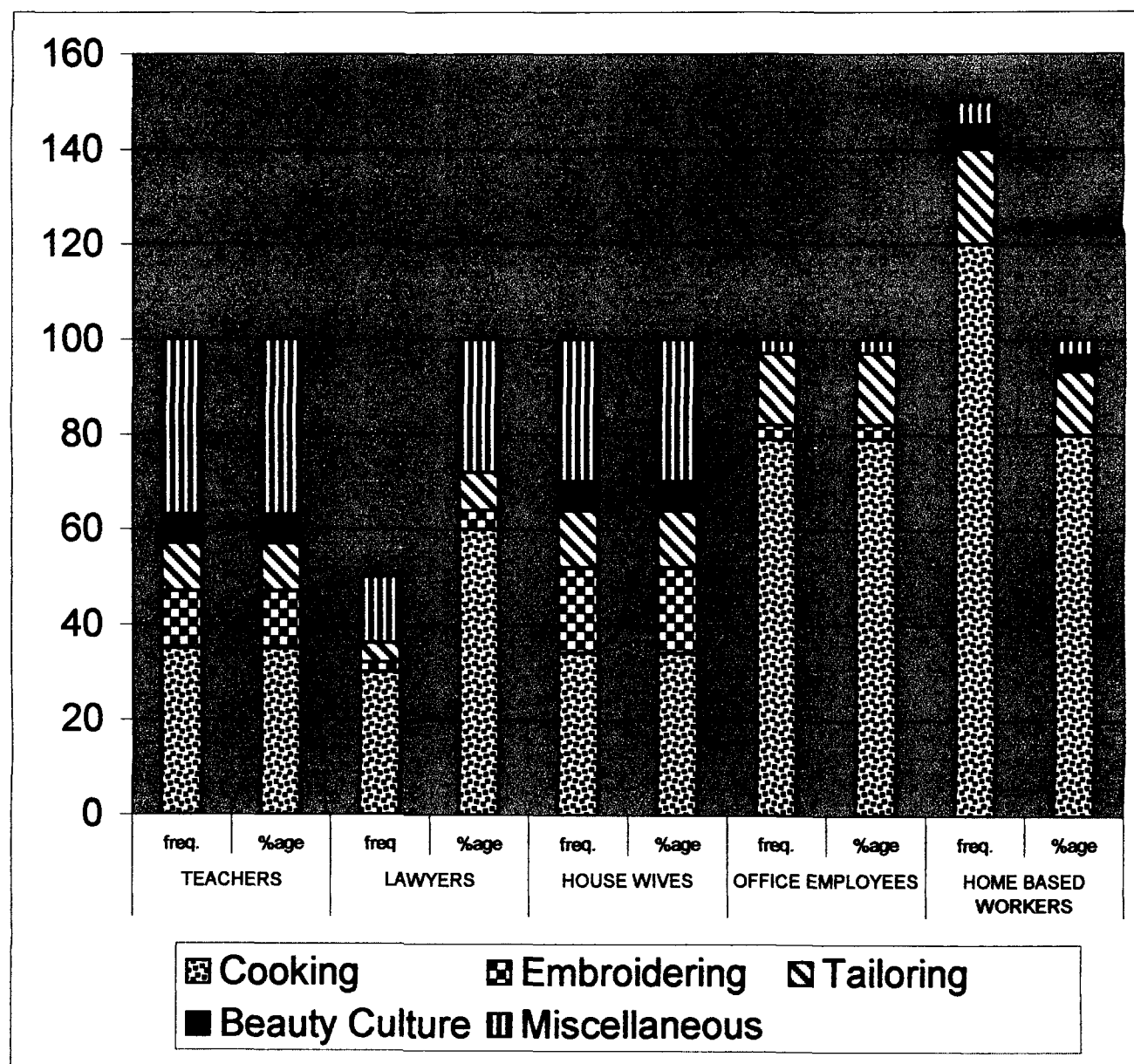
The position under housewives and home based workers are quite different. Here Hindi counts 15%, English 2% and Urdu is supposed to be first preferential language that counts 20%. Lastly the category of those they known all the three languages counts 63% under total frequency. The position among home based workers are as surprising. Here Hindi comes first about 23.3% and Urdu second preference that counts 16.6% and rest comes miscellaneous class that is 60%.

Table 1.4, clearly shows the trend with regard to preference of language during writing skill. Under teachers preference shows Hindi as 5%, English 20%, Urdu 5% and 68% those know all the three languages. Usually teachers known all the three languages in writing skill. In lawyers class this preference counts 46% those write Hindi, 28% English 7% Urdu and above all 6%. Here Hindi counts lies under first preference in because Hindi is the official language of the court. Amongst office employees class position is 20% use Hindi, 10% English, 35% Urdu and 25% respondents write all the three languages. Similarly in housewives and home based workers Hindi and Urdu is preferential language. In housewives 5% user Hindi, 6% English, 22% urdu and above all the language counts 49%, Here we can interpret that Urdu is first preferential language among housewives but in home based worker Hindi is first preferential language that counts 23.3% and Urdu 16.6% lies as second preferential language.

TABLE 1.5

TRAINED IN ANY SKILL

ITEM NO.	SKILL	TEACHERS		LAWYERS		HOUSE WIVES		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Cooking	35	35	30	60	34	34	79	79	120	80
2	Embroidering	12	12	2	4	18	18	3	3	0	0
3	Tailoring	10	10	4	8	12	12	15	15	20	13.33
4	Beauty Culture	6	6	0	0	6	6	0	0	5	3.33
5	Miscellaneous	37	37	14	28	30	30	3	3	5	3.34
	TOTAL	100	100	50	100	100	100	100	100	150	100



From table 1.5, we can analyse easily the skill pattern. Amongst all the respondent. Interestingly this table is meant to assess the professional training skill under home based workers but all other respondents also give their views. So under home based workers it counts as 80% earn money from cooking, 13% from Tailoring, 3.3% from beauty culture. Thus we can interpret that cooking is famous skill of earning under home based workers. Under teachers apart from teaching profession 35%. prefer cooking by herself, 12% embroidery, 10% Tailoring and 6% beauty culture. Under lawyers classes 60% know cooking, 4% embroidery and 8% tailoring from the total frequency. Housewives only 34% know cooking, 18% embroidery and 12% Tailoring. Position under office employees are as cooking 79%, 3% embroidery and 15% tailoring.

Thus we can analyse easily home based workers use these skills as an employment because they learn these skills just to earn money to fulfil their day to day needs.

Discussion

From the above analysis we can conclude that Muslim women in urban and semi-urban areas of the district have a higher rate of formal education than in rural areas. It is in rural area fewer women have formal education indicating that lack of educational facilities, conservative attitude of parents, economic status of parents is a main factors in determining women's education.

In urban and semi urban parts of the district most women educated upto graduate and above graduate but in rural areas they are educated upto V and XIIth Classes. Their reason is orthodoxy of their parents and low income groups are attributed factors.

However, religious education remains a second popular choice. When women had received only religious education indicating that it remains a popular option. However, it would be incorrect to attributed its popularity to conservative values alone. Undoubtedly, there are conservative and religious sections of the community who do not see the relevance of any other type of education the religious education. It is obvious that lack of opportunities for formal education due to paucity of schools contributes significantly to the preference for religious education. Further, religious educational Institutions are both widespread and situated in locations proximate to the residential areas that making them easily accessible to the sections of Muslim population.

Formally educated masses read and write mostly all the languages such as Hindi, English, Urdu and few of them know Arabic.

But in the Home based workers surprisingly these women know Hindi and Urdu both. Among majority of these women cooking skill is popular and considered to be as a means of earning.

Other development factors such as socio-economic conditions and the political situation also influence the choice of

educational system. For example, women from developmentally backward areas or women from poor households have often received no education. Sometimes political situation is also contributory factor as Aligarh University is prove to sine die due to riots, here education suffers during this period.

A. Language of the Muslim Women :

There is no clear trend with regard to language preferences as under most of the respondents read Urdu as their local language because Aligarh district is Muslim dominated place, majority of women know all the three languages except few. The fact that a large number of women read Urdu can be attributed to the fact that Muslim children are taught to read the Holy Quran in Arabic from early childhood. They, therefore go through elementary reading and writing of the Arabic script that is the same as in Urdu script. Reading of Urdu therefore comes more easily to Muslims with a little follow up. In Aligarh Urdu also as an medium of instruction. Thus Urdu, the language that is commonly identified as the language of Muslims in the entire North has taken a second place to Hindi.

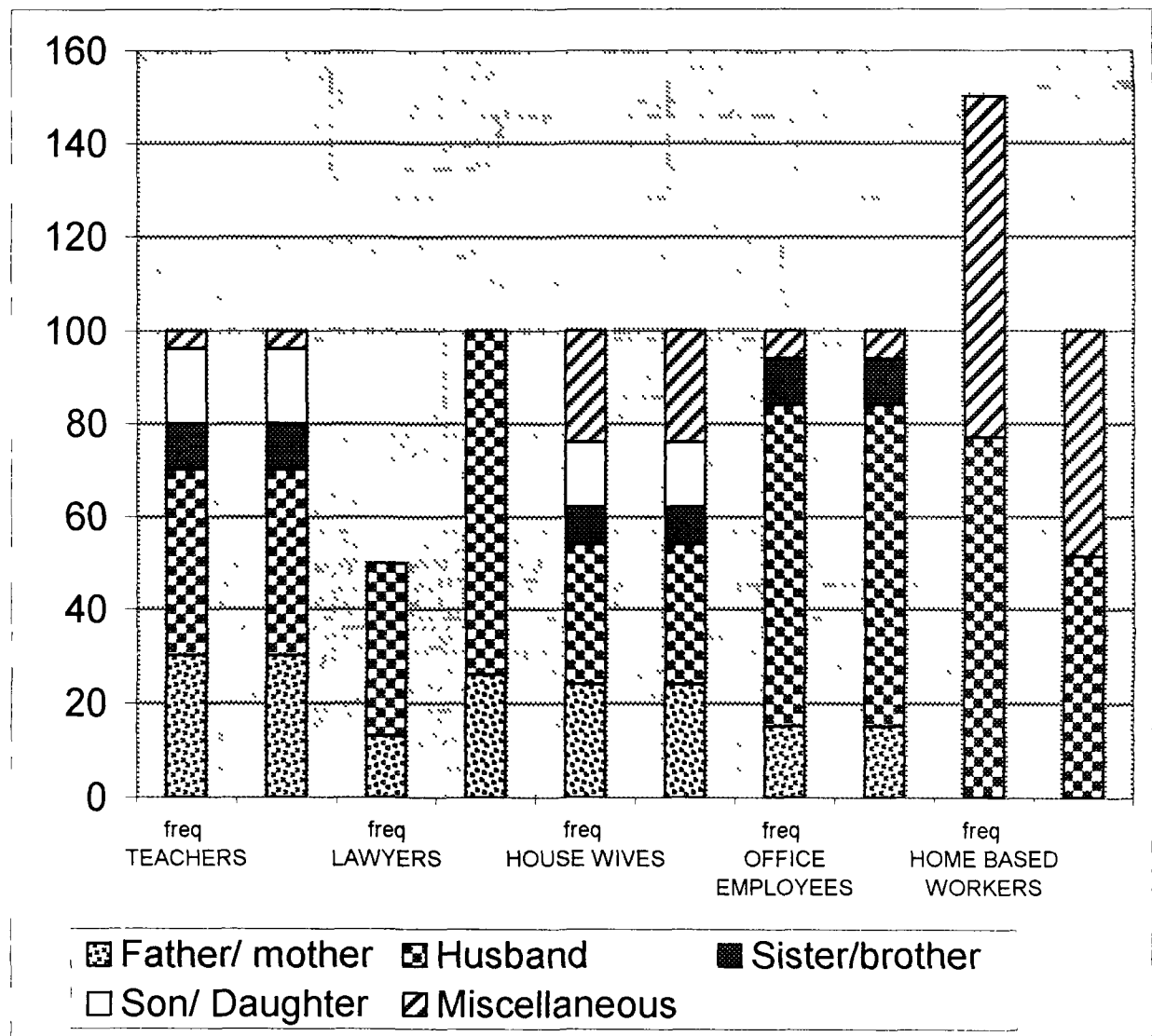
Thus, despite the fact that Urdu seems to be preferred language in entire north region including Aligarh. One may conclude that Muslims in India consider the Urdu language to be the mark of Muslims identity. It is shown in entire Aligarh district including rural areas Urdu language is a popular preference over other language.

EDUCATION : FAMILY

TABLE 2.1

EDUCATION IN THE FAMILY OF THE RESPONDENT

ITEM NO	EDUCATED ADULT	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Father/ mother	30	30	13	26	24	24	15	15	0	0
2	Husband	40	40	37	74	30	30	69	69	77	51 34
3	Sister/brother	10	10	0	0	8	8	10	10	0	0
4	Son/ Daughter	16	16	0	0	14	14	0	0	0	0
5	Miscellaneous	4	4	0	0	24	24	6	6	73	48 66
	TOTAL	100	100	50	100	100	100	100	100	150	100



II. Education Status of the Family of the Respondents :

This section allowed for the contextualisation of women education within her family in comparison to her responses in earlier section. Secondly, it helped in assessing the general trend in education and whether new generation were more educated and whether their levels of education were increasing?

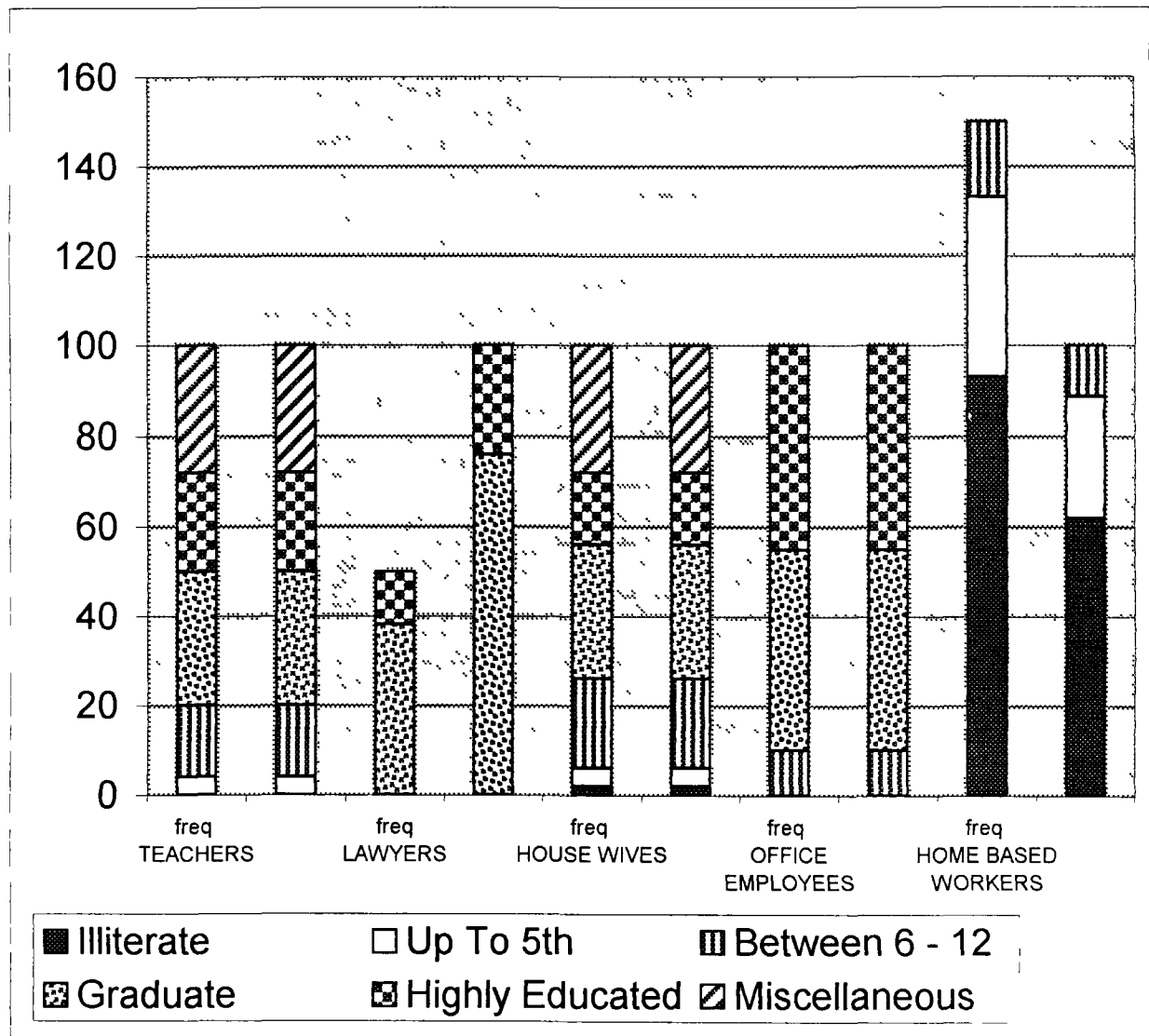
When educational status of the family of the women are seen commonly, father is most educated adult of the family followed by husband and thereafter, there siblings. Under other samples position is almost different, here she is also educated with their male counter parts. In Aligarh mostly women are highly educated, so women do not find a matrimonial alliance to match according to their educational qualification, a high percentage of women in Aligarh are single or spinster.

Table 2.1, helps to place for the status of women's education within their families. According to this table education amongst the family of the teachers category are as husbands 40% educated than father 30% and their sister/brothers 10% and son/daughter 16%. Under lawyers class position firstly 26% father are educated and secondly 74% husbands are educated. The reason is that they have opted lawyer profession as an inheritance and so they have educated family background. In office employees 15% father educated, 69% husband and 10% brothers. Amongst house wives class 24% fathers are educated than 30% husbands are

TABLE 2.2

MOST EDUCATED ADULT IN THE FAMILY

ITEM NO	EDUCATION LEVEL	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Illiterate	0	0	0	0	2	2	0	0	93	62
2	Up To 5th	4	4	0	0	4	4	0	0	40	26 67
3	Between 6 - 12	16	16	0	0	20	20	10	10	17	11 33
4	Graduate	30	30	38	76	30	30	45	45	0	0
5	Highly Educated	22	22	12	24	16	16	45	45	0	0
6	Miscellaneous	28	28	0	0	28	28	0	0	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



educated. Under home based workers surprising some of them have educated husbands as 51.3%. This percentage is totally contrary to the belief that they are belong to totally illiterate families.

Thus, we can interpret that on comparing the educational qualification of the respondents and their families level of education is increasing. But the education in the family of the respondents are not as high as in this generation :

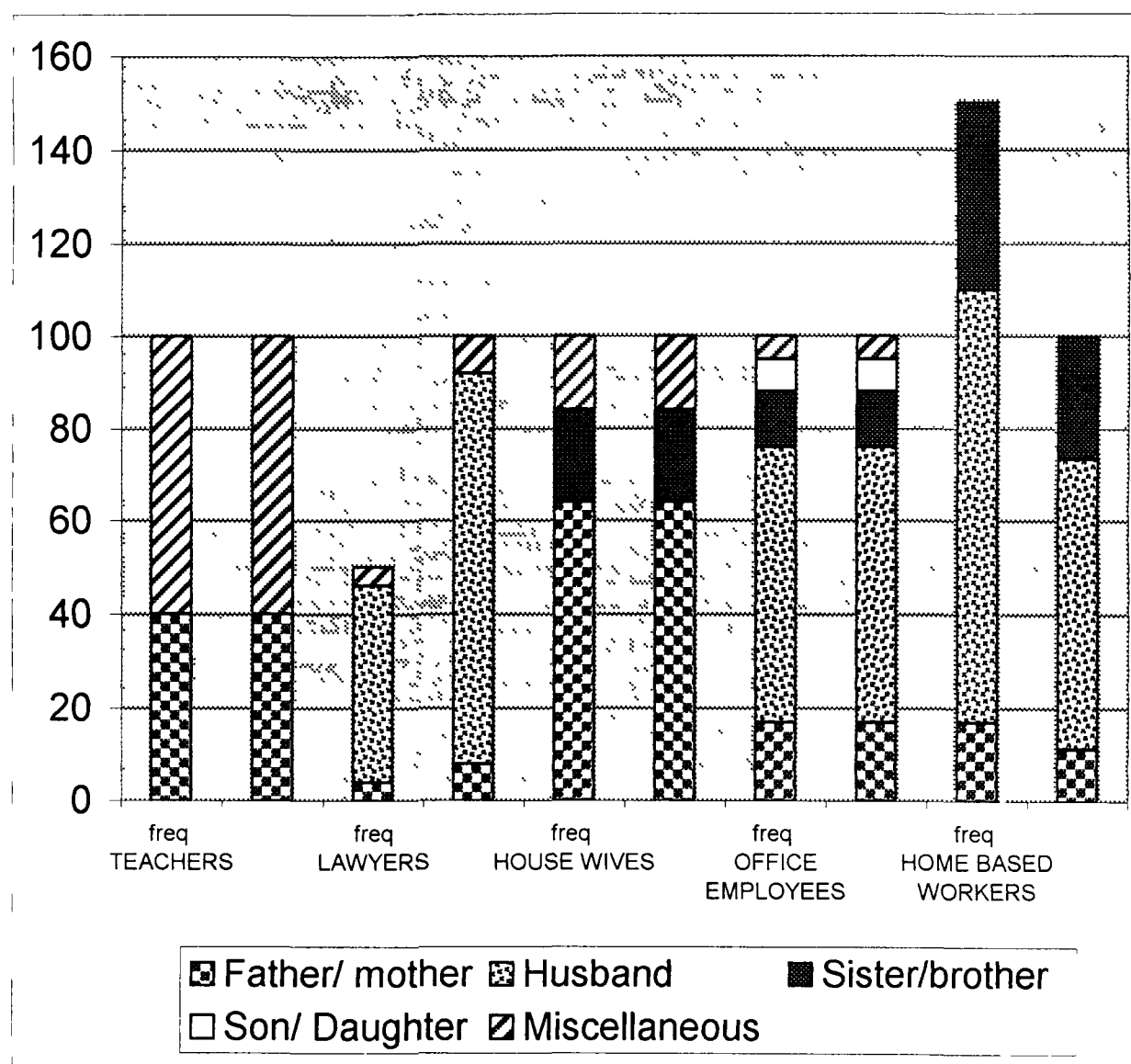
As far as table 2.2, is concerned it shows the percentage of most educated adult in the family of the respondents. In teachers category this shows as nobody is illiterate, 4% upto 5th class, 16% between 6-12, 30% upto graduate and lastly 22% upto above graduate. Under lawyers class we can count as none is illiterate certainly they are graduate as 76% and highly educated as 24%. This shows they opt their ancestors profession and must have take legal education. Position in the office employees category are as they count 10% in between 6-12, graduates 45% as well as highly educated counts as 45%. The condition under home based workers are 62% of them are illiterate upto 5th standard 26.6% illiterate and 11.3% between 6-12th standard are illiterate.

This analysis is important to know what type of family background all the respondents shall have. This decrease the disparity between education of respondents and the most educated family members, here education is a pointer towards the attempt to bring women at part with men, atleast in sphere of education. Thus

TABLE 2.3

LEAST EDUCATED IN THE FAMILY

ITEM NO	LEAST EDUCATED	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Father/ mother	40	40	4	8	64	64	17	17	17	11 33
2	Husband	0	0	42	84	0	0	59	59	93	62
3	Sister/brother	0	0	0	0	20	20	12	12	40	26 67
4	Son/ Daughter	0	0	0	0	0	0	7	7	0	0
5	Miscellaneous	60	60	4	8	16	16	5	5	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



we can inferred from above tables that there is differences in men and women education in two generations and it is explicit from the table that illiteracy is considerably reduced in the second generation.

Table 2.3 reflects the position of least educated adult in the family of the respondents as among teachers it count as 40% father and mother is least educated otherwise all others are educated. Position under women lawyers surprisingly their husbands are least educated upto 84% and their parents upto 8%, in the total frequency. This means they are educated but in comparison to all other family members they are least educated. Position of office employees are as follows parents counts 17%, husband 59% and rest of the other counts negligible percentage. Position under housewives are as parents counts 64% and sister/brothers 20%. Under home based workers parents are least educated upto 11.3%, their husbands 62% and sisters/brothers 26.6%.

Here level of education of the least educated person was not totally illiterate in each case but it differ, in comparison with other family members.

III. Economic Status of the Parties

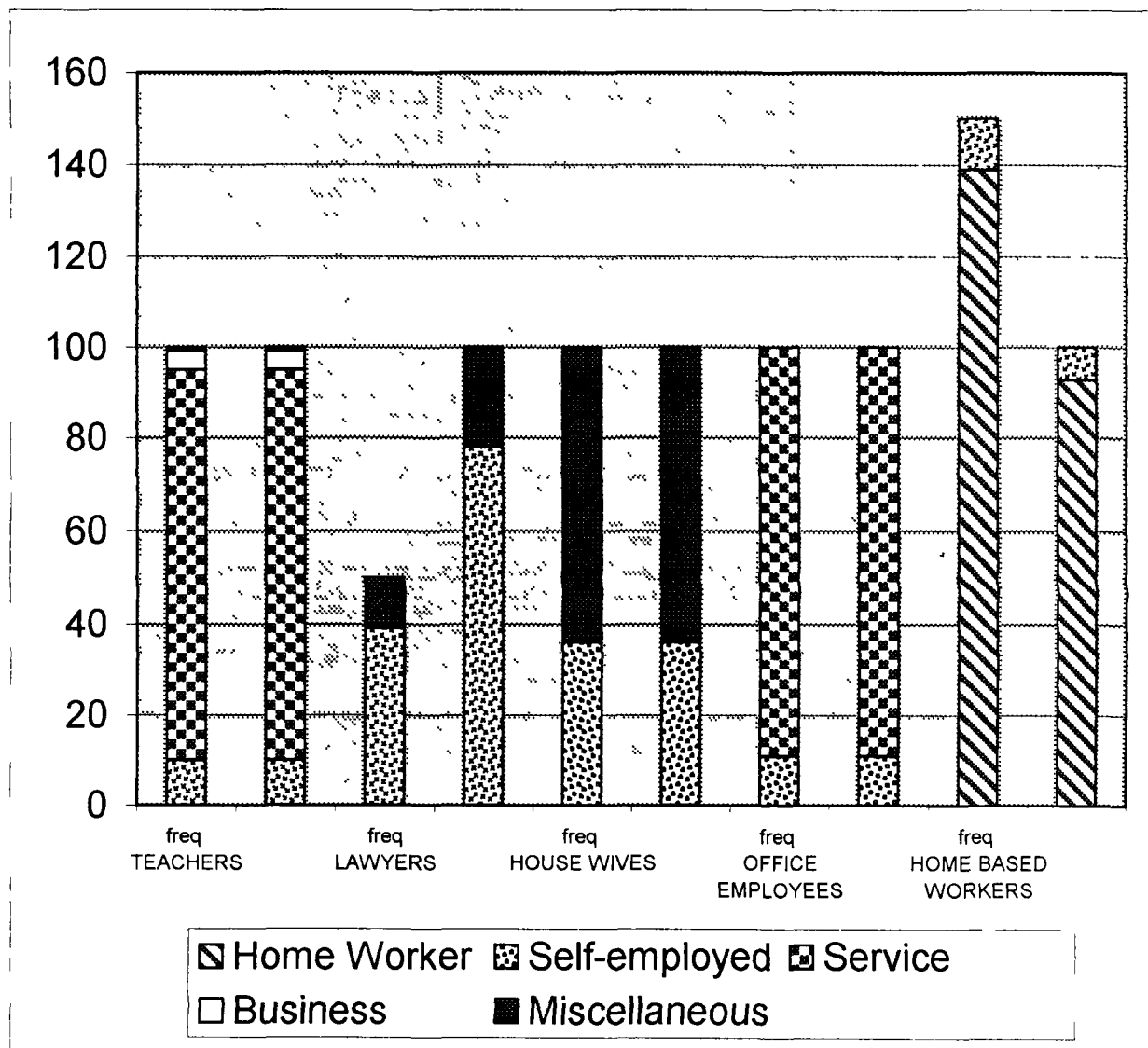
In the entire district economic status of women are quite strong. The percentage of housewives insignificant. The trend shows high participation of women in employment activities. In Aligarh even some of the housewives are self employed as to run

ECONOMIC STATUS

TABLE 3 1

ECONOMIC STATUS OF THE PARTIES

ITEM NO	ECONOMIC STATUS	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq	%age	freq	%age	freq	%age
1	Home Worker	0	0	0	0	0	0	0	0	139	92.67
2	Self-employed	10	10	39	78	36	36	11	11	11	7.33
3	Service	85	85	0	0	0	0	89	89	0	0
4	Business	4	4	0	0	0	0	0	0	0	0
5	Miscellaneous	1	1	11	22	64	64	0	0	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



beauty parlours, tailoring and hand embroidery, these activities accounts participation of housewives also in the earning.

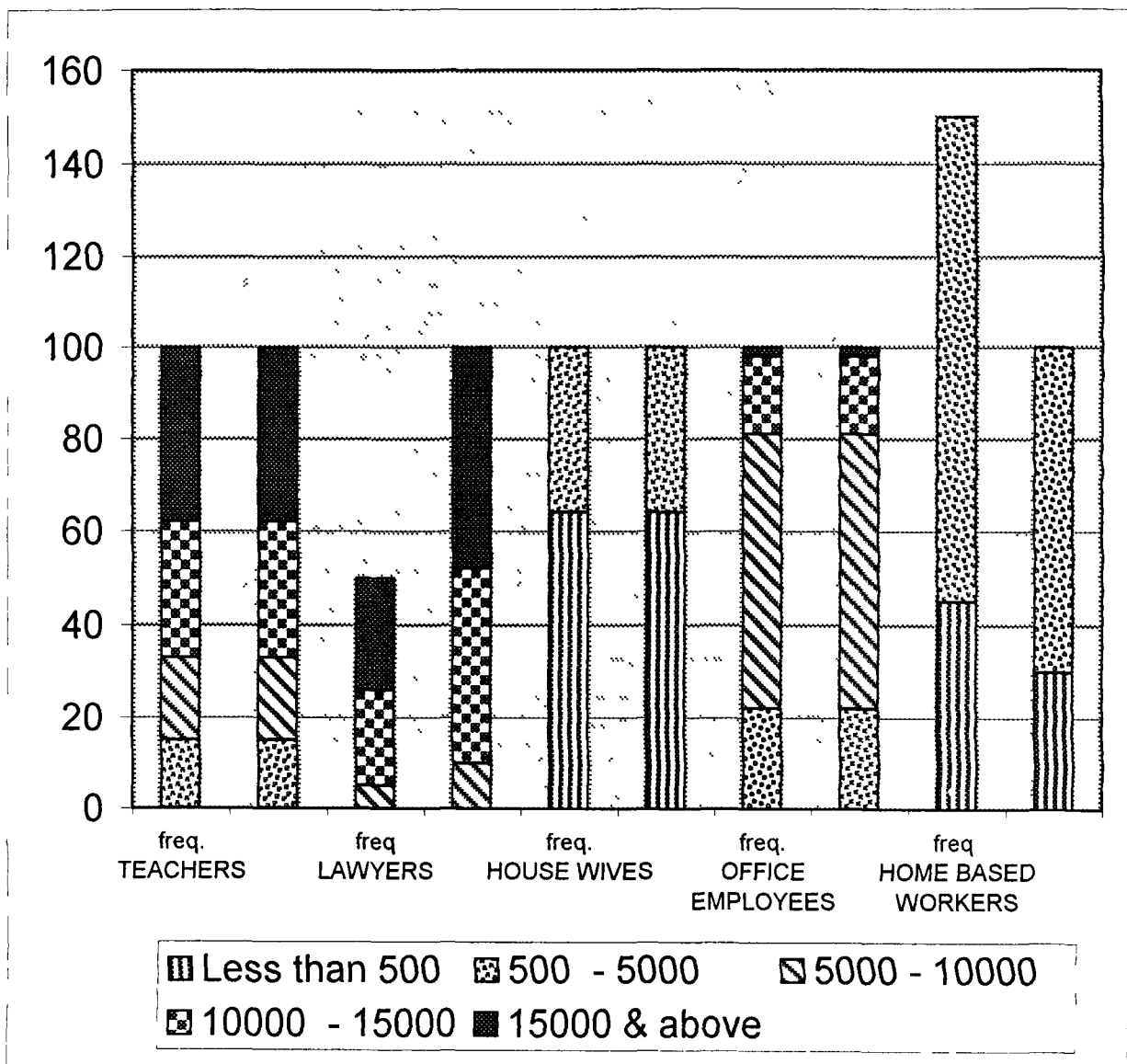
About more than half of the women surveyed have some form of monthly income though in some cases very meagre. The table no. 3.1 will judge the economic status of all the respondent as in teachers class 85% are in service and 10% also have some type of self employed works and 4% of them are in business. This shows apart from their teaching they are busy in earning by some other methods as tuition at home and run private handicrafts and embroidery institutes. Lawyers classes shows that 78% are indulge in self employment as private practitioner. Their only source of earning is practice. Office employees shows as firstly 89% they are in service and then some are in self employed work as 11% Housewives have some interesting features as they have indulge themselves in some self employed activities to sustain and support their families under home based workers class, they have very meagre earnings but most of them are employed as home workers that counts 92.6% and rest of them are self employed that count as 7.3%.

Table 3.2, shows level of income under teachers class 15% lies in between 500-5000, 18% in between 5000-1000, 29% in between 1000-15000 lastly 38% counts above 15000. More than 50% mass of the total 500 respondents earn handsome amount the reason is consistent rise in enrolment in formal education with a rise in family income. Position in lawyers class are as only 10%

TABLE 3.2

LEVEL OF INCOME

ITEM NO	INCOME	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq.	%age
1	Less than 500	0	0	0	0	64	64	0	0	45	30
2	500 - 5000	15	15	0	0	36	36	22	22	105	70
3	5000 - 10000	18	18	5	10	0	0	59	59	0	0
4	10000 - 15000	29	29	21	42	0	0	17	17	0	0
5	15000 & above	38	38	24	48	0	0	2	2	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



lies between 5000-10000, 42% lies in between 10,000-15,000 and finally 48% lies in between above 15,000. The position about income of office employees class are as 22% lies in between 5000-10,000, 59% lies in between 10,000-15,000 and lastly 17% lies above 15,000. The housewives also earn some income through some self employed schemes. Lastly, income among home based workers generally less than 500 or little high than 500.

Discussion

It appears that in this district, the Muslims are relatively prosperous. But wealthier disparity shows under office employees class and home based workers class mainly. In addition, a significant number of people have migrated to the foreign countries for employment and their remittances back home contribute to the higher socio economic status of Muslim families amongst teachers and lawyers classes.

In analysis we can say that, while we are get to see the influence of education on employment of women, the fact that high number of employed women and for home based workers education is not necessarily a pre-requisite. A high employment of women is also sometimes explained as the community having a more progressive attitude under working women. Here again, one is not sure if this can be conclusively established, because by working, some women i.e. those engaged in home based work, are not necessarily transgressing the boundaries of the private sphere

ordained for them by religion and society. The community and the women themselves, are merely responding and adjusting to the compulsions caused by the economic circumstances of their families and communities.

A. Influence of Family income on education and employment.

The economic conditions of a household is the major factor determining the educational status of women with formal education rises. Suppose when the family income is below 500 then lesser number of women have formal education. On the other hand when family income is high automatically there is consistent rise in enrolment in formal education with a rise in family income. On the whole we can sum up education and employment is an important factors to raise the status of women and their participation in day to day activities.

IV. Religious Practice

This part IV were based on common understanding of what it takes to be a Muslim i.e. praying, fasting, paying of zakat and reading and understanding of Quran. While there are not an indicator of how religious a person is, it does not suggest the extent to which women hold these practices. The question on the language in which translation of Quran is read if it was understood was specifically ,aimed at knowing the language in which yields the best results.

RELIGIOSITY

TABLE 4 1

RELIGIOUS PRACTICE

ITEM NO	RELIGIOSITY	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq	%age	freq	%age
1	Daily	59	59	22	44	62	62	39	39	20	13 33
2	On festival	8	8	17	34	2	2	25	25	51	34
3	Friday	8	8	11	22	10	10	6	6	77	51 33
4	During Crisis	0	0	0	0	2	2	4	4	2	1 34
5	Never	6	6	0	0	0	0	20	20	0	0
6	Miscellaneous	19	19	0	0	24	24	6	6	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100

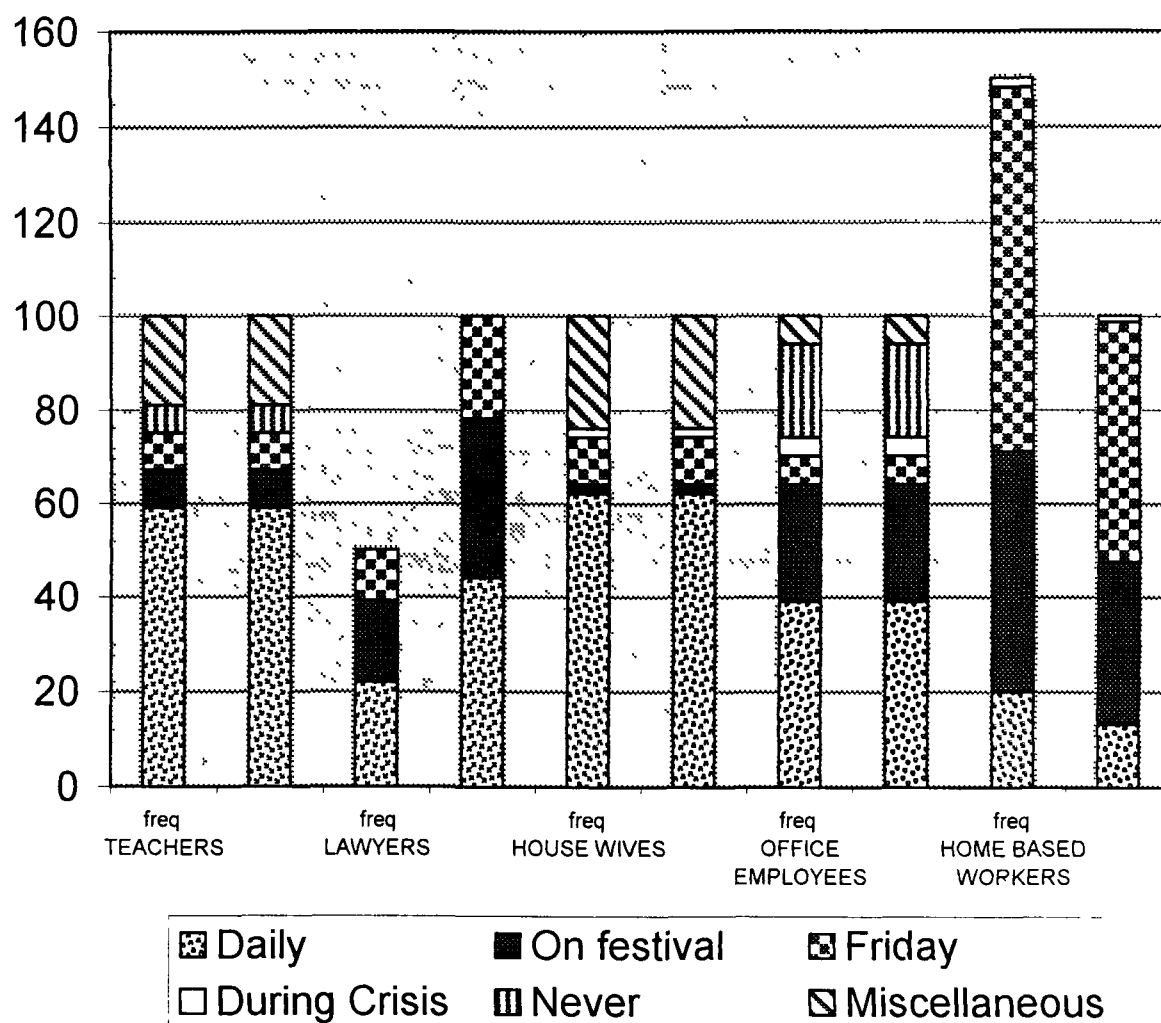
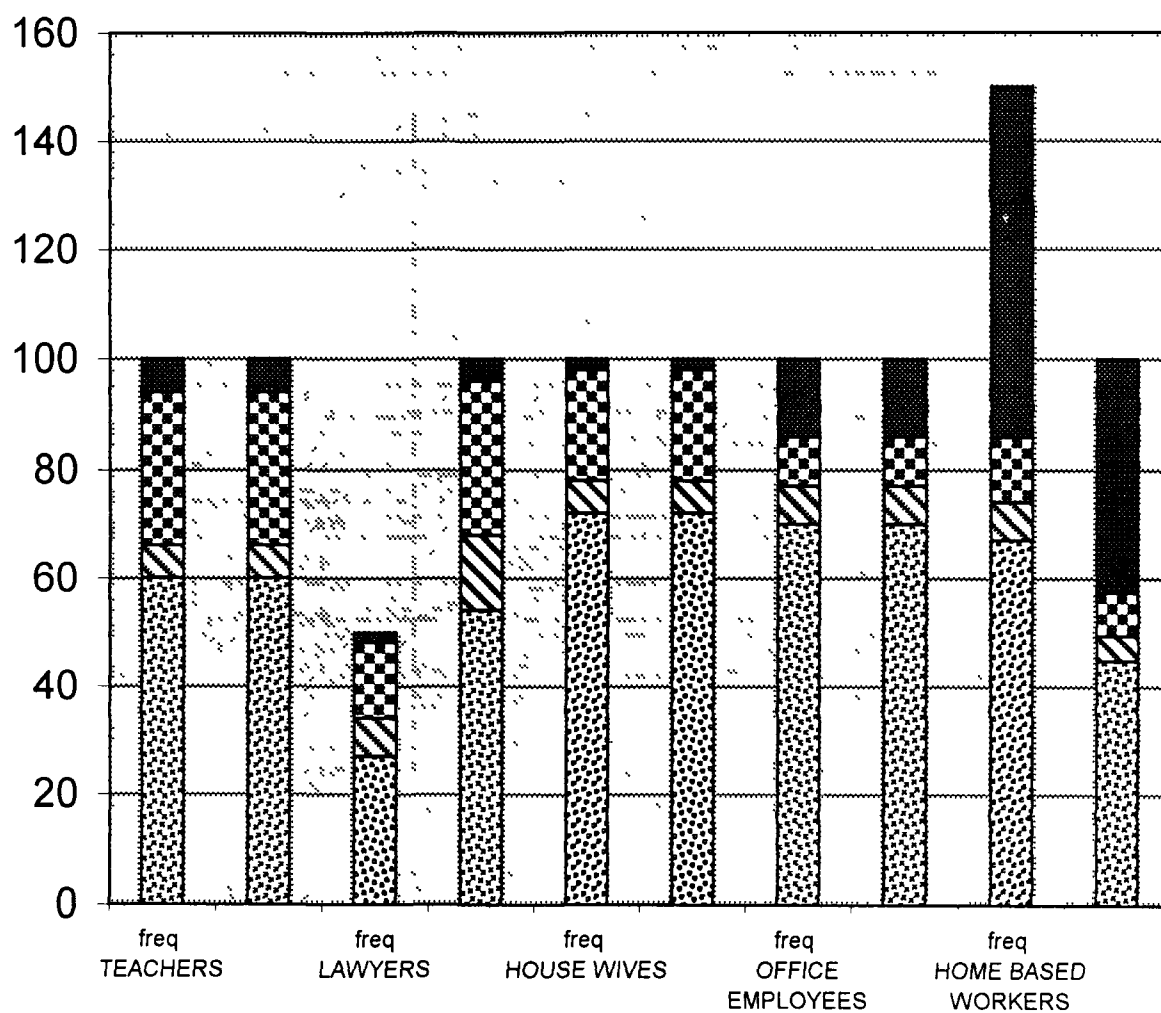


TABLE 4.2

PRACTICE OF FAST DURING RAMZAN

ITEM NO	FAST - RAMZAN	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Daily	60	60	27	54	72	72	70	70	67	44.67
2	Some Days	6	6	7	14	6	6	7	7	7	4.67
3	Friday	28	28	14	28	20	20	9	9	12	8
4	During Crisis	0	0	0	0	0	0	0	0	0	0
5	Miscellaneous	6	6	2	4	2	2	14	14	64	42.66
	TOTAL	100	100	50	100	100	100	100	100	150	100



Daily
 Some Days
 Friday
 During Crisis
 Miscellaneous

Table No. 4.1 shows impact of religious practice over the life of the respondents. In teacher class they offer prayers daily upto 59%, on festivals 8%, Friday only 8% and 6% those they never offer prayer.

Amongst lawyers class 44% offer prayer daily, 34% on festivals and 22% on Friday. In office employees class those offer daily counts 39% on festivals 25%, Friday only 6%, during crisis 4% and those are never offer prayers count 6%. The position to offer prayers is much high amongst the housewives in comparison with all other classes. 39% of the office employees offer prayers daily, 25% on festivals, 6% on Friday only, 4% during crisis and 20% never offer prayers. The position of religiosity amongst home based workers are as 13.3% offers daily, 34% on festivals, 51.3% on Friday and only 1.3% during crisis.

Table 4.2, clearly states the practice of fast during Ramzan. Here teachers counts as 60% keep fast daily, 28% on Friday and 6% some days. Amongst lawyers class as 54% keep fast daily, 14% some days and 28% on Friday only. Position to practice fast during Ramzan amongst office employees category are as, 70% keep fast some daily, 7%. Keep some days, 9% on Friday. .Practice of fast during Ramzan under housewives category are highest in comparison to others. As 72% of them keep fast daily, 6% some days and 20% only on Friday. Home based workers despite hardwork used to keep fast as 44.6% daily, 4.6% some days and 8% on Friday.

TABLE 4.3

READING OF THE QURAN

ITEM NO	QURAN READING	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Daily	38	38	20	40	48	48	25	25	24	16
2	Sometimes	22	22	15	30	30	30	29	29	7	4.67
3	On Occasions	10	10	12	24	8	8	17	17	4	2.67
4	Never	30	30	3	6	14	14	29	29	115	76.66
TOTAL		100	100	50	100	100	100	100	100	150	100

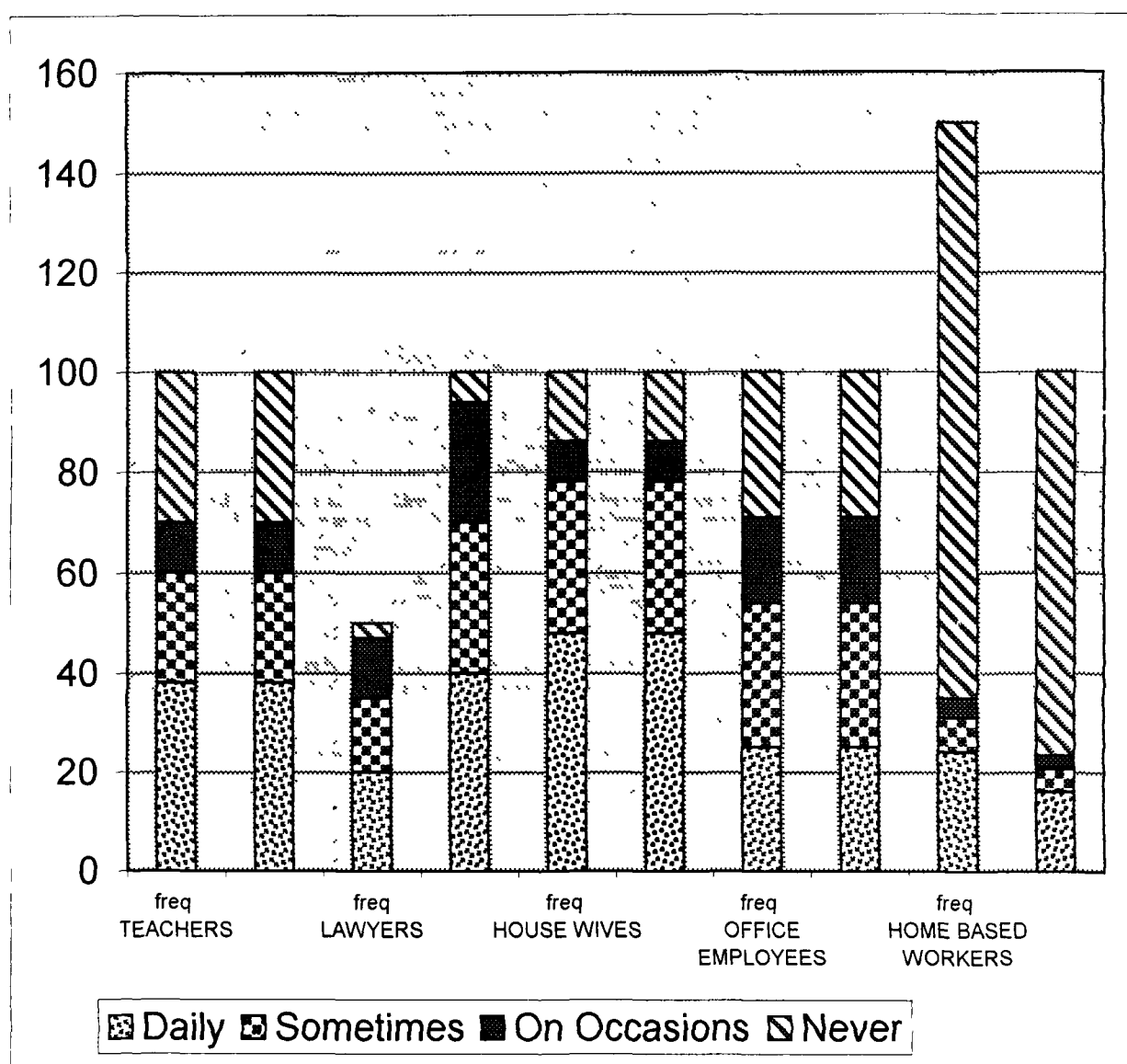
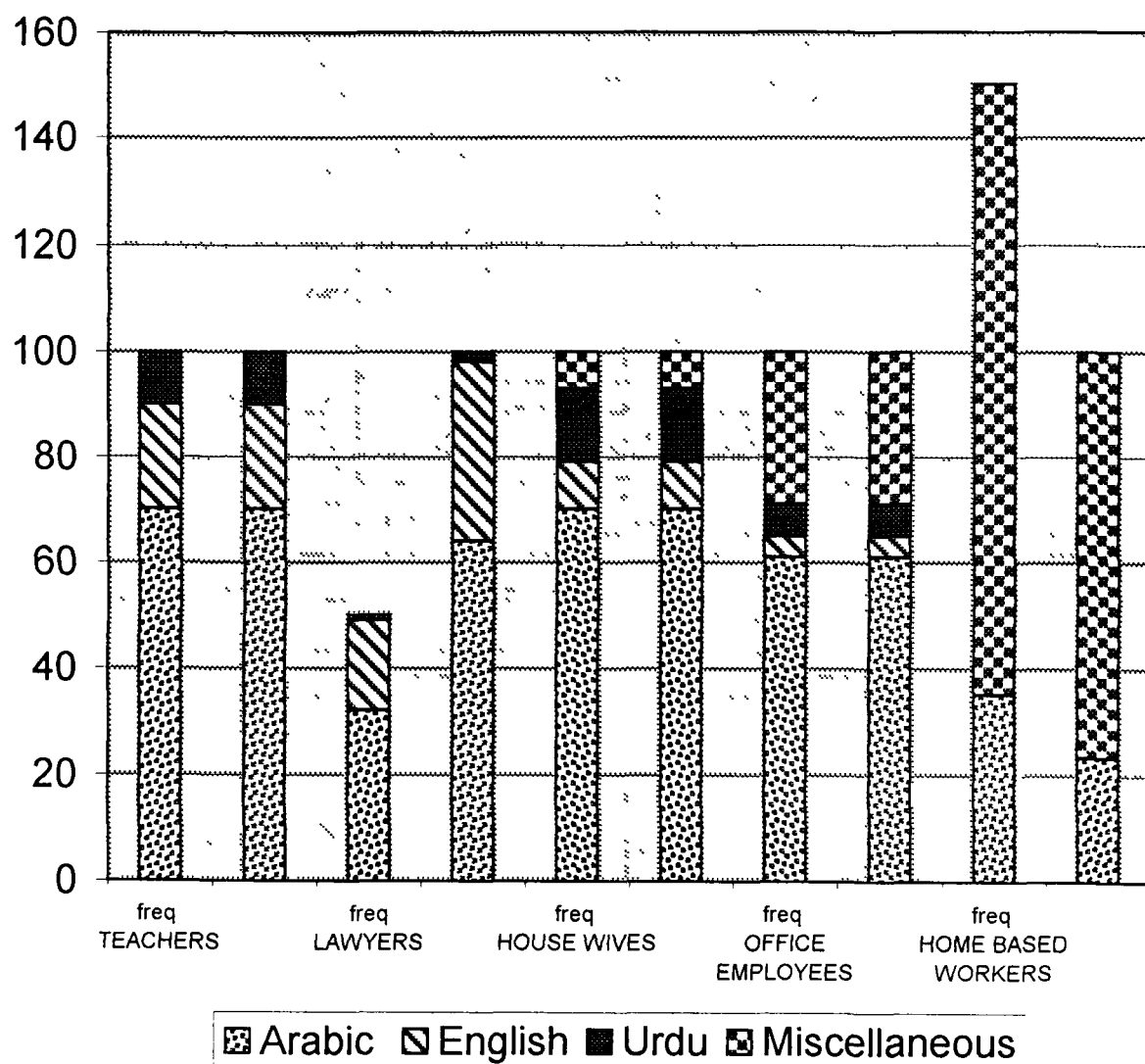


TABLE 4 4

READING OF TRANSLATION OF THE QURAN

ITEM NO	QURAN READING	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Arabic	70	70	32	64	70	70	61	61	35	23 33
2	English	20	20	17	34	9	9	4	4	0	0
3	Urdu	10	10	1	2	14	14	6	6	0	0
4	Miscellaneous	0	0	0	0	7	7	29	29	115	76 67
TOTAL		100	100	50	100	100	100	100	100	150	100



Thus, we can suggest that in the entire district people are very religious. According to Table 4.3, the practice of reading Quran are as follows: teachers read Quran daily 38%, 22% sometimes, 10% on occasion and 30% never read¹ Quran. Lawyers category read Quran daily as 40%, 30% sometimes, 24%, on occasions and 6% never read Quran. Office employees category read Quran daily 25%, sometimes 29%, on occasions 17% and 29% never read Quran. Housewives category has very high percentage about the reading of the Quran as 48% read daily, 30% sometimes, 8% on occasions and rest 14% never read Quran. In home based workers only 16% read Quran daily, 4.6% read sometimes, 2.6% read on occasions and 76.6% never read Quran. Because due to paucity of the time they don't have develop the habit to read Quran.

Table 4.4 talks about reading of the translation of the Quran in which language. 70% teachers class read Quran in Arabic script. 20% read in English and 10% are in Urdu language, Lawyers class read translation of the Quran as 64% in Arabic, 34% in English, 2% in Urdu. In officer employees class reading of the Quran counts as 61%, in Arabic, 4% in English and 6% in Urdu. The position under housewives class are 70% of them read Quran in Arabic, 9% are in English, 14% are in Urdu. Lastly, home based workers class they read translation of the Quran as 23.3% read in Arabic..

Table 4.5, shows awareness about Quranic verses as in teacher class it numbered as 29% those says yes and 15% says no

TABLE 4.5

UNDERSTANDING OF THE QURANIC VERSES

ITEM NO	KNOWLEDGE OF QURAN VERSES	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	29	29	49	98	38	38	15	15	127	84.67
2	No	15	15	0	0	20	20	59	59	2	1.33
3	Partially know	56	56	1	2	42	42	26	26	21	14
	TOTAL	100	100	50	100	100	100	100	100	150	100

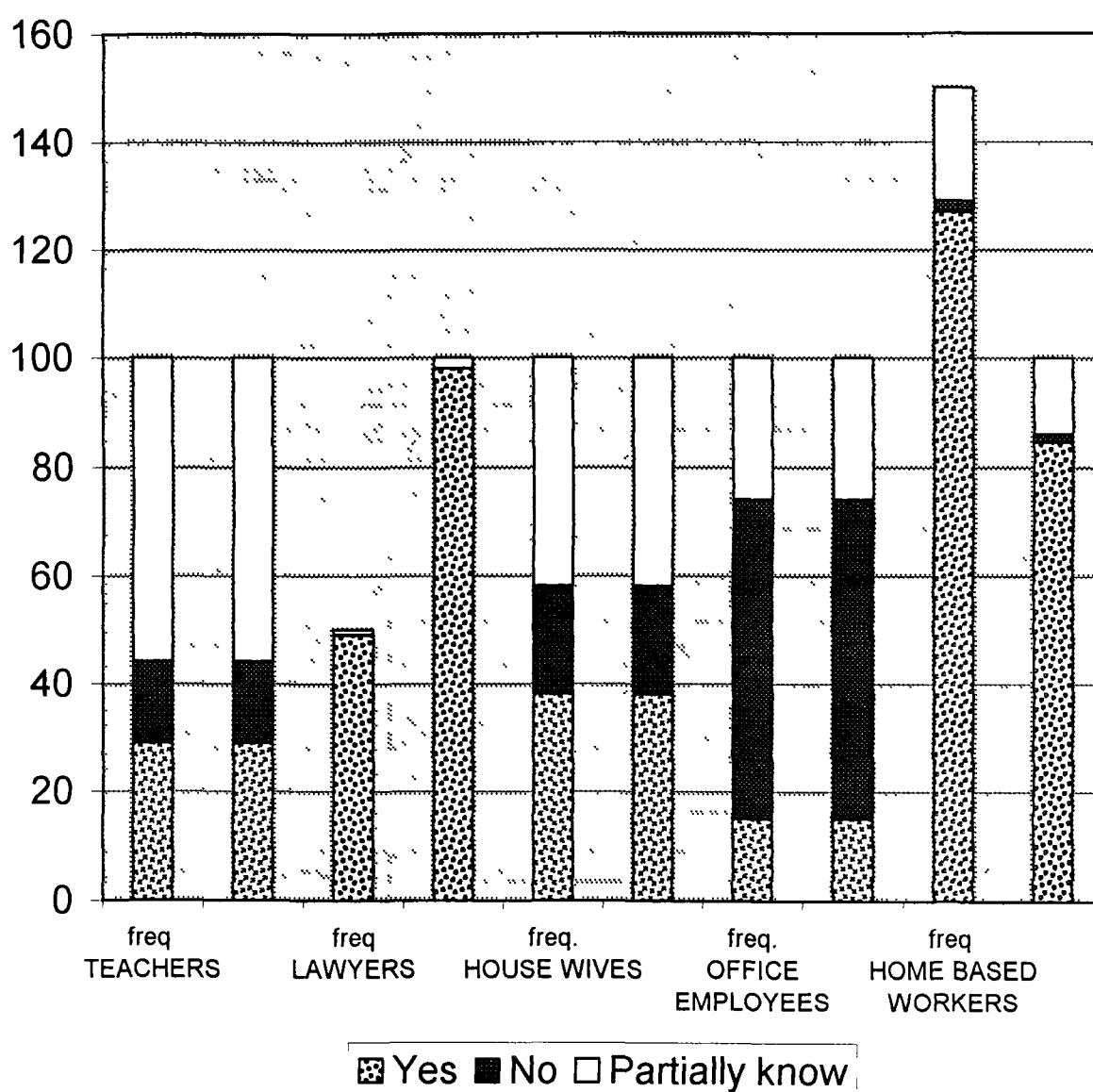
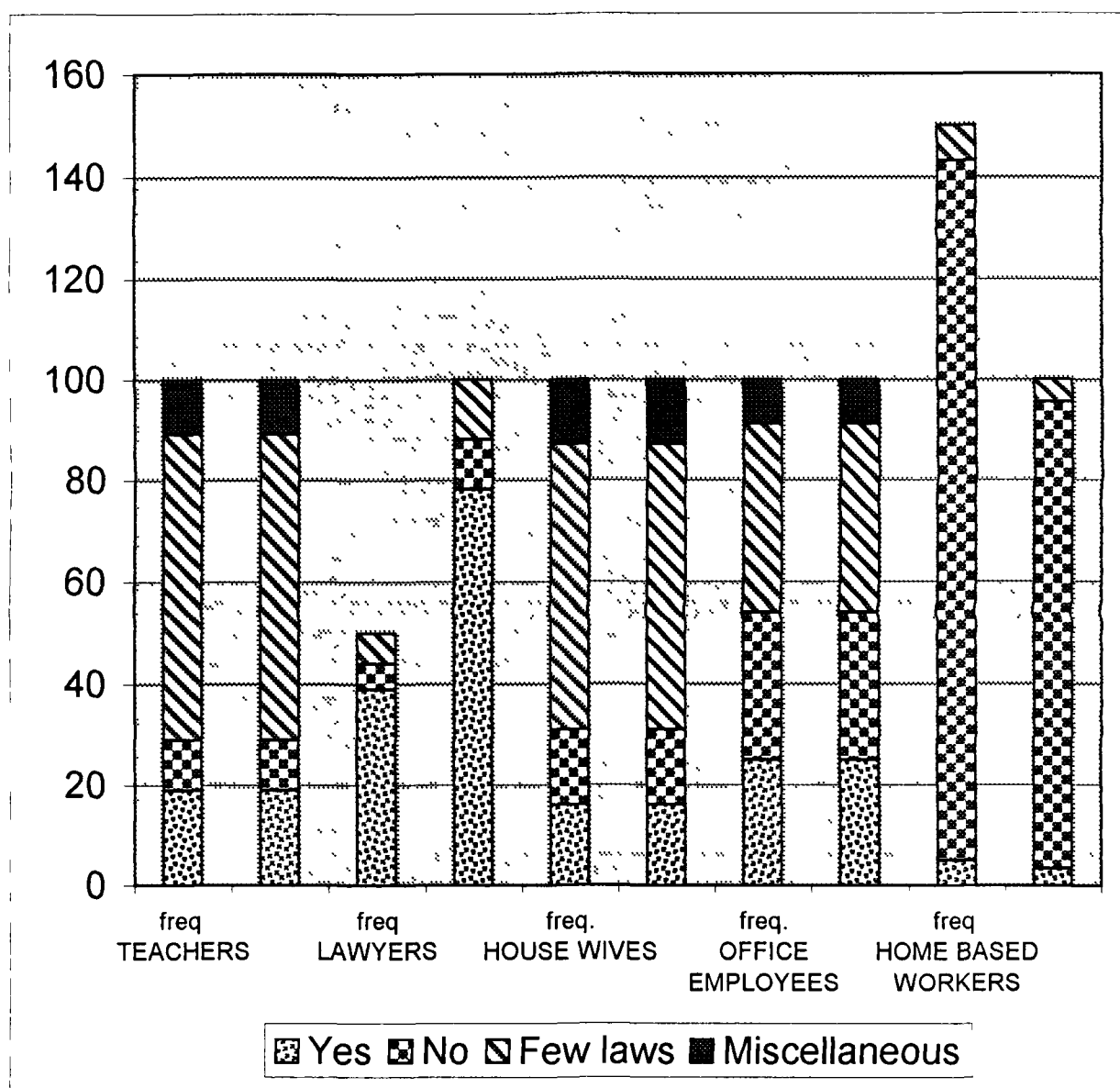


TABLE 4.6

KNOWLEDGE OF THE QURANIC LAWS

ITEM NO	KNOWLEDGE OF QURAN LAWS	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	19	19	39	78	16	16	25	25	5	3.33
2	No	10	10	5	10	15	15	29	29	138	92
3	Few laws	60	60	6	12	56	56	37	37	7	4.67
4	Miscellaneous	11	11	0	0	13	13	9	9	0	0
TOTAL		100	100	50	100	100	100	100	100	150	100



and 56% says those partially understand the Quranic verses. Amongst Lawyers class 98% says yes and 2% says those partially know it. Position of office employees are as, 15% says yes, 59% says no and 20% are those partially understand it. Amongst housewives 38% says yes, 20% says no and 42% says those are partially aware with this. In home based workers 84.6% says yes, 1.3% says no and finally 14% are those they are partially understand these verses.

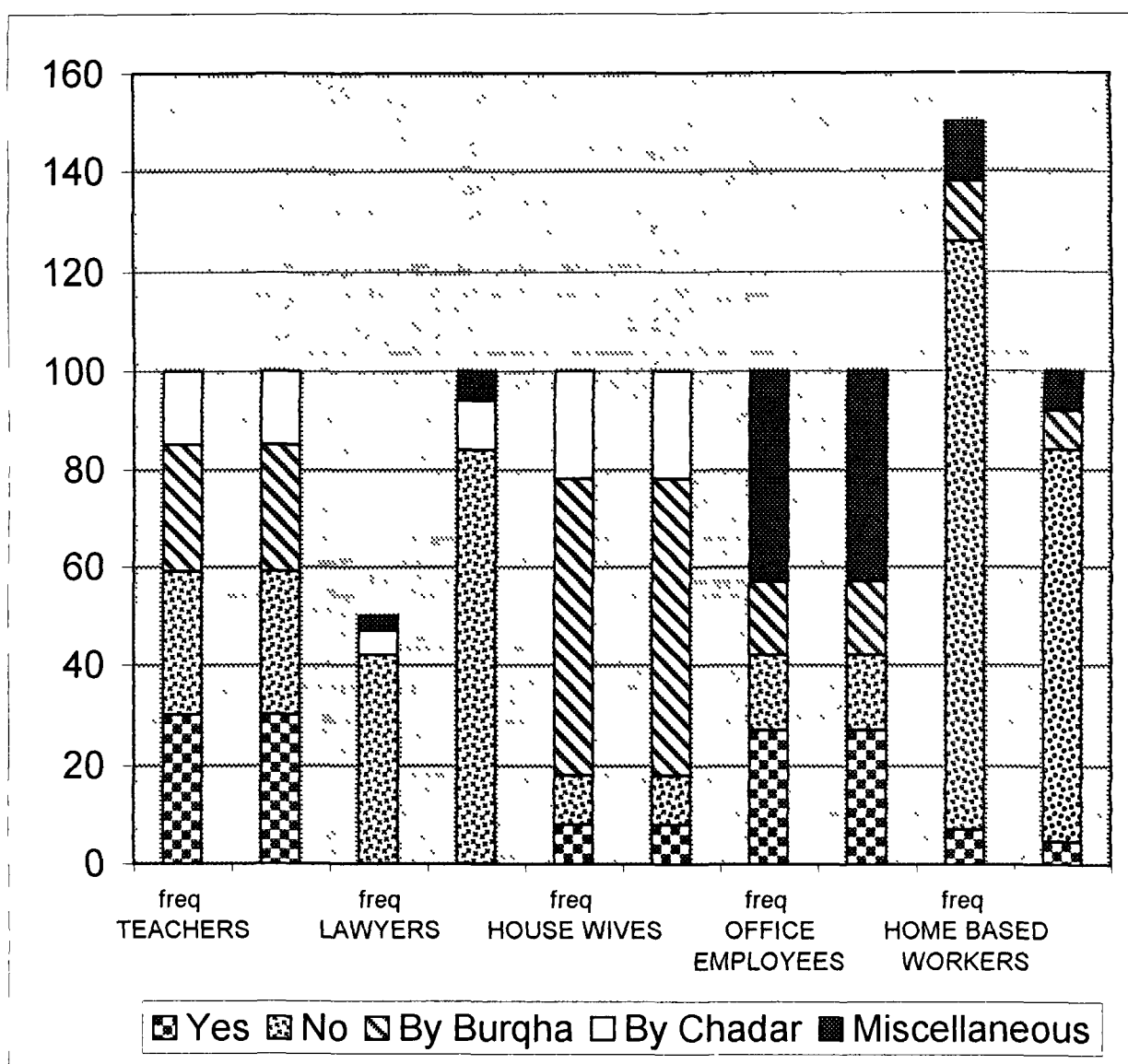
Table 4.6, talks about knowledge of Quranic laws, teachers category counts as 19% says, 10% says no and 60% counts those are aware with few laws. Lawyers category counts as 78% says yes, 10% says no and 12% are those they are aware few laws. In office employees, 25% says yes, 29% says no. and 37% says they are aware with some laws. The class of home based workers category are totally ignorant about Quranic laws, 92% from them says no, 3.3% says yes and only 4.6% says those aware with few laws..

The table 4.7, clearly shows the practice of pardah in a Muslim women. The practice of pardah in teachers are counts as 30% those are in the favour of pardah, 29% those are disfavour for it, 26% prefer to wear burqha and 15% of them are in favour to cover head with chadar. In Lawyers class 84% of them are totally against pardah, they feel shy to observe pardah and then go to court. But 10% of them accepted to wear chadar. In office employees 27% says yes to observe pardah, 15% says no for it and

TABLE 4 7

PRACTICE OF PARDAH IN ANY FORM

ITEM NO	PARDAH PRACTICE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	30	30	0	0	8	8	27	27	7	4.67
2	No	29	29	42	84	10	10	15	15	119	79.33
3	By Burqha	26	26	0	0	60	60	15	15	12	8
4	By Chadar	15	15	5	10	22	22	0	0	0	0
5	Miscellaneous	0	0	3	6	0	0	43	43	12	8
TOTAL		100	100	50	100	100	100	100	100	150	100



15% wear burqha. Position of pardah in home based workers 4.6% says yes for it, 79.3% says no, and 8% wear burqha while go out side Frequency about high percentage of women not observing paradah amongst home based workers shows the strategy of action indicates the nature of social situation in which the women find themselves today and . nature of work in which they are engaged.

Discussion

On evaluating the significance of pardah in Muslim social structure the following points emerge: the main function of pardah is secluding the women from the men and men from the women. The women were forbidden to come out before the men of kin and non kin categories. The main reason for this was that respectability of a person and his prestige depended on the way his female family members were secluded from the public. This outlook still persists amongst the few Muslim families whose wives and daughters do not enter a house unless it is cleared of all the male members. Such an extreme pattern is rarely met with now and has been somewhat eroded in the average middle class families. Observance of pardah from the elder male members of the household signifies the acceptance and recognition of their superior authority. Before all the elder kin members, including her father the girl never raise her voice while talking. Besides, some of these kin members are the potential spouse of the girl with the choice of her parents because Muslims practice cousins marriage. So mostly women will not negotiate during her marriage.

When we saw non observance of paradah by service section, teachers and lawyers etc., this referred as women's emancipation and changes in role and status of the women.

The impact of religious education is good. Moreover, the continuance of pardah among the Muslims shows that no concessions are made to the women without struggling for their rights. The Muslim men do not give up rights unless women ask for them and when women make an effort, they find that a portion of the Muslim community is tradition bound while the other portion grants them freedom from certain restrictions. This advancement towards part of acceptance of women as individuals reflects upon the basic shift of values and ideals of the men. This change, has been brought about within the restricted area of the family, is in contrast to the unchanged Muslim Personal law. Inspite of unlimited persuasion by government, previously the attitude of the Muslim towards their personal Law remains unchanged even in educated masses. Now paradigm shifts from this rigidity.

V. Status of the Parties: During Marriage Negotiations

The questions in section V looks at the impact of marriage negotiations comprises age of the parties, types of marriage, marriage in relations consideration taken into account by girl during marriage negotiations. Most of the women survey are married under the study.

STATUS OF THE PARTIES : DURING MARRIAGE NEGOTIATIONS

TABLE 5.1

STATUS OF THE PARTIES

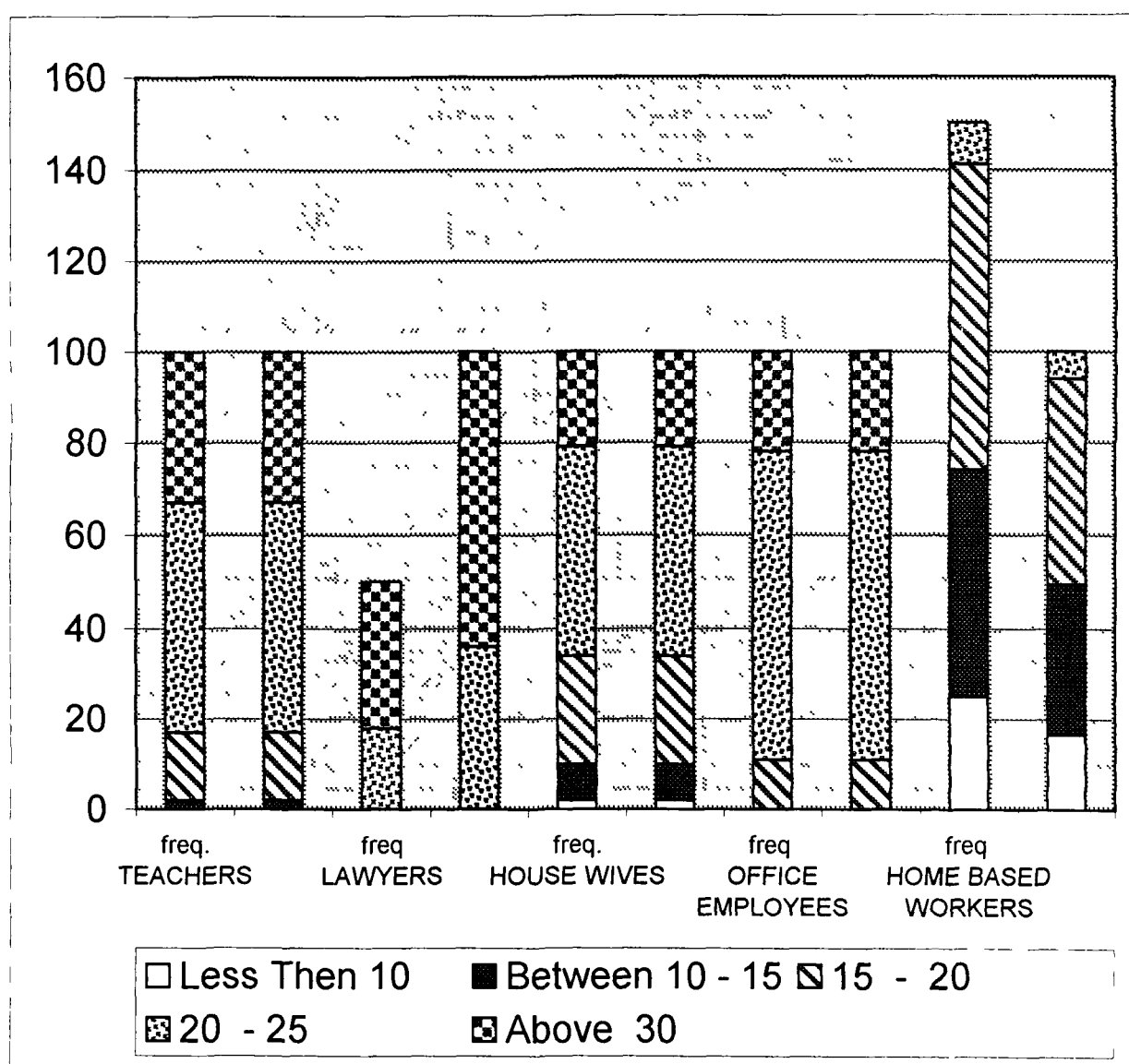
ITEM NO	STATUS	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Married	52	52	36	72	75	75	89	89	140	93.33
2	Single	4	4	2	4	0	0	0	0	0	0
3	Widow	2	2	0	0	2	2	2	2	4	2.67
4	Divorced	2	2	4	8	1	1	4	4	3	2
5	Separated	20	20	6	12	4	4	3	3	2	1.33
6	Miscellaneous	20	20	2	4	18	18	2	2	1	0.67
	TOTAL	100	100	50	100	100	100	100	100	150	100



TABLE 5.2

AGE OF GIRLS AT THE TIME OF MARRIAGE

ITEM NO	AGE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Less Than 10	0	0	0	0	2	2	0	0	25	16.67
2	Between 10 - 15	2	2	0	0	8	8	0	0	49	32.67
3	15 - 20	15	15	0	0	24	24	11	11	67	44.66
4	20 - 25	50	50	18	36	45	45	67	67	9	6
5	Above 30	33	33	32	64	21	21	22	22	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



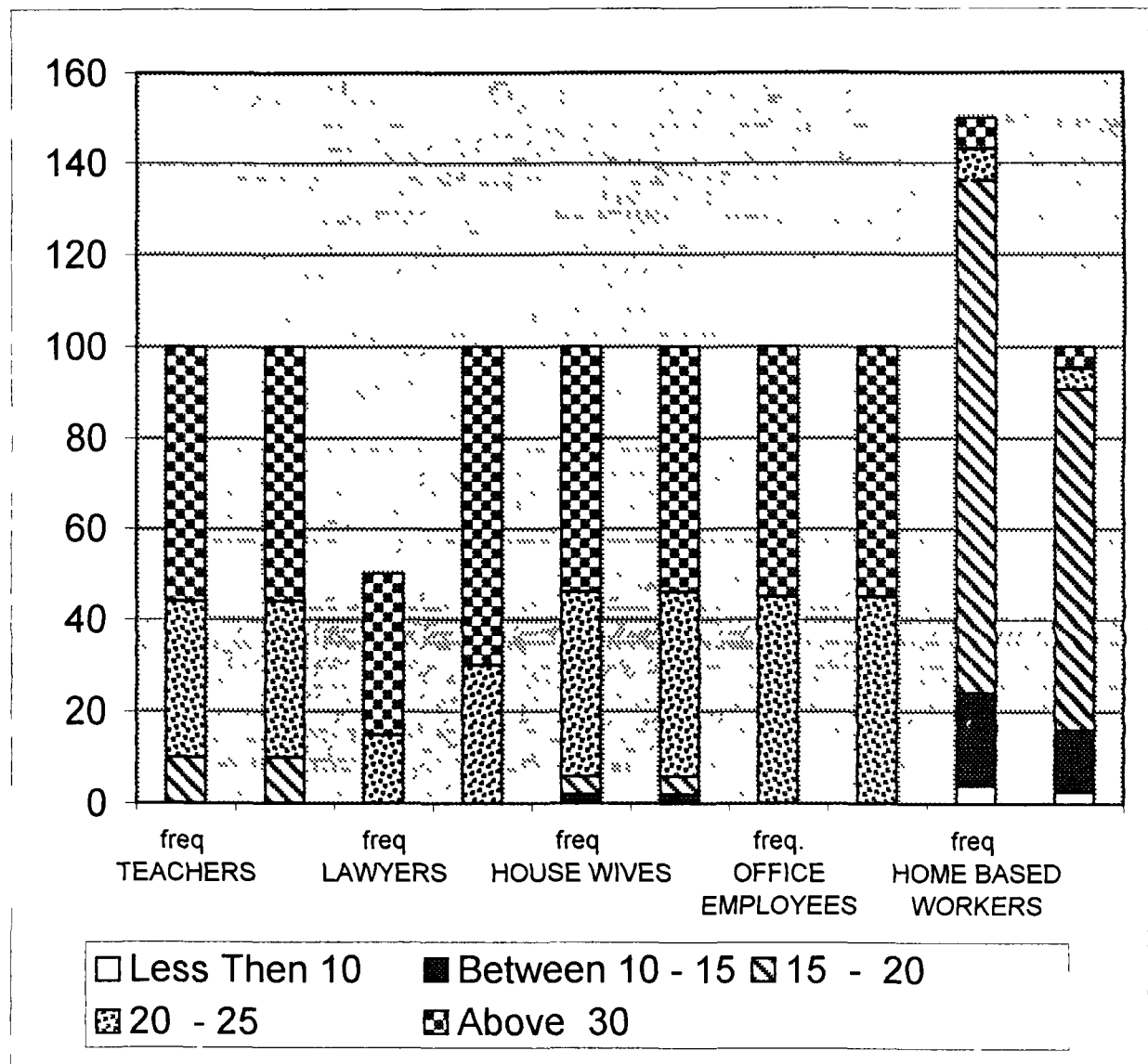
From the Table 5.1, it is clearly shown that under teachers category married counts as 52%, 4% single, 2% widow, 2% divorcee and 20% are separated. This high percentage of separate women shows non participation of girl during her marriage negotiations. In lawyers class married counts as 72%, 4% single, 8% divorcee and 12% those are separated. Under office employees 89% women are married, 2% counts widow, 4% divorcee and lastly 3% those they are separated. Position under housewives is very high, 75% they are married, 2% widow, 1% divorcee and 4% separated class. Home based workers class married rates 93.3%, as widow 2.6%, as divorcee 2% and as separated 1.3%, respectively.

It is clear from the table 5.2 that among teachers class age of girl at the time of marriage frequency lies generally between 20-25 as 50%, above 30 lies as 33% and lastly 15% in between 15-20 years. In lawyers class its frequency shows high among above 30 as 64% and in between 20-25 age groups as 36%. Under office employees class it lies first under 20-25 age groups as 67%, in between 15-20 age groups counts as 11%. Lastly in age groups of above 30 counts as 22%. Age of marriage amongst housewives class are mainly in age groups of between, 20-25 counts as 45%, in above 30 age groups as 22% and finally in age group of in between 15-20 years as 24%. Position of home based workers class is certainly different from all above mentioned parties. Here highest age group lies in between 15-20 years as 44.6%, between 10-15 years counts as 32.6%, less than 10 years counts as 16.6% and

TABLE 5 3

HUSBAND AGE AT THE TIME OF MARRIAGE

ITEM NO	AGE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Less Than 10	0	0	0	0	0	0	0	0	4	2 66
2	Between 10 - 15	0	0	0	0	2	2	0	0	20	13 33
3	15 - 20	10	10	0	0	4	4	0	0	112	74 67
4	20 - 25	34	34	15	30	40	40	45	45	7	4 67
5	Above 30	56	56	35	70	54	54	55	55	7	4 67
	TOTAL	100	100	50	100	100	100	100	100	150	100



finally in between 20-25 age groups it counts as 6%.

Table 5.3, talks about husband age at the time of marriage. In teachers class age group lies under the age of above 30 as 56%, in age group between 20-25 as 34% and lastly lies between 15-20 age group as 10%. Lawyer class counts as 30% in between 20-25 age groups and in above 30 age group lies as 70%. Under office employees class it lies as 55% amongst above 30 age group and in between 20-25 lies as 45%. This shows that amongst all above mentioned groups age of husbands marriage are all most same. But in housewives and in home based workers classes, this is quite different housewives counts as 40% in between 20-25 age groups and 54% above 30 age groups. Lastly home based workers counts most attractive age groups as 74.6% in between 15-20 age groups, between 10-15 age groups counts as 13.3%, in between 20-25, above 30 counts same as 4.67% and less than 10 years age group counts as 2.6%.

A comparative analysis of the above mentioned tables, shows that firstly, in higher education there is delay of marriage. Secondly suitable match for highly educated women will not easily available. In all samples the highest frequency of marriage lies between 20-25.

Table 5.4, talks about type of marriage between the parties. In teachers class popular type of marriage is Nikah as 51%, love marriage cum Nikah counts as 24%, customary marriage counts 2%

TABLE 5.4

TYPE OF MARRIAGE BETWEEN THE PARTIES

ITEM NO	TYPE OF MARRIAGE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Civil	2	2	0	0	0	0	0	0	0	0
2	Customary	8	8	0	0	4	4	0	0	47	31 34
3	Nikah	51	51	27	54	70	70	76	76	101	67 33
4	love come Nikah	24	24	17	34	16	16	15	15	0	0
5	Miscellaneous	15	15	6	12	10	10	9	9	2	1.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

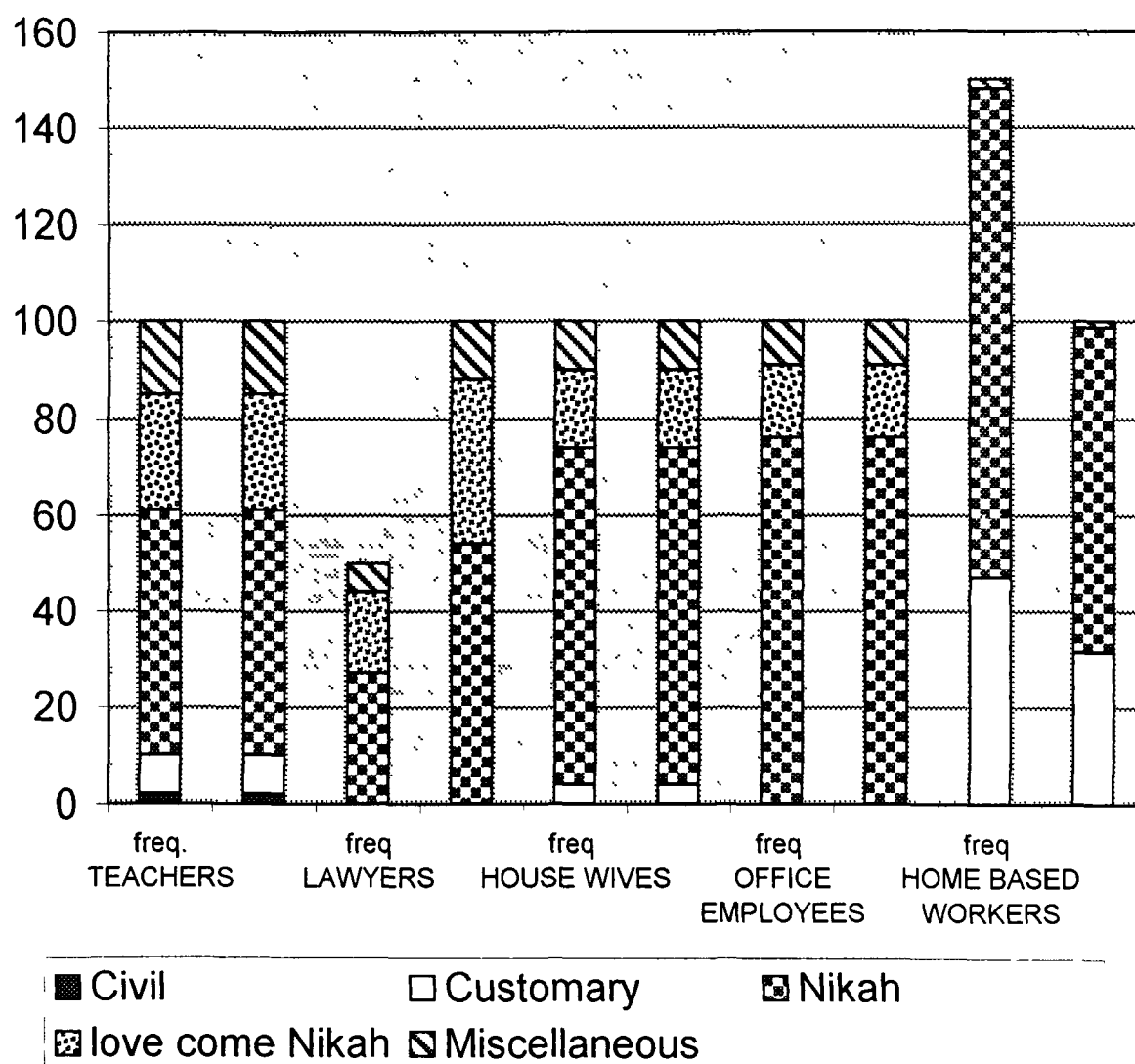
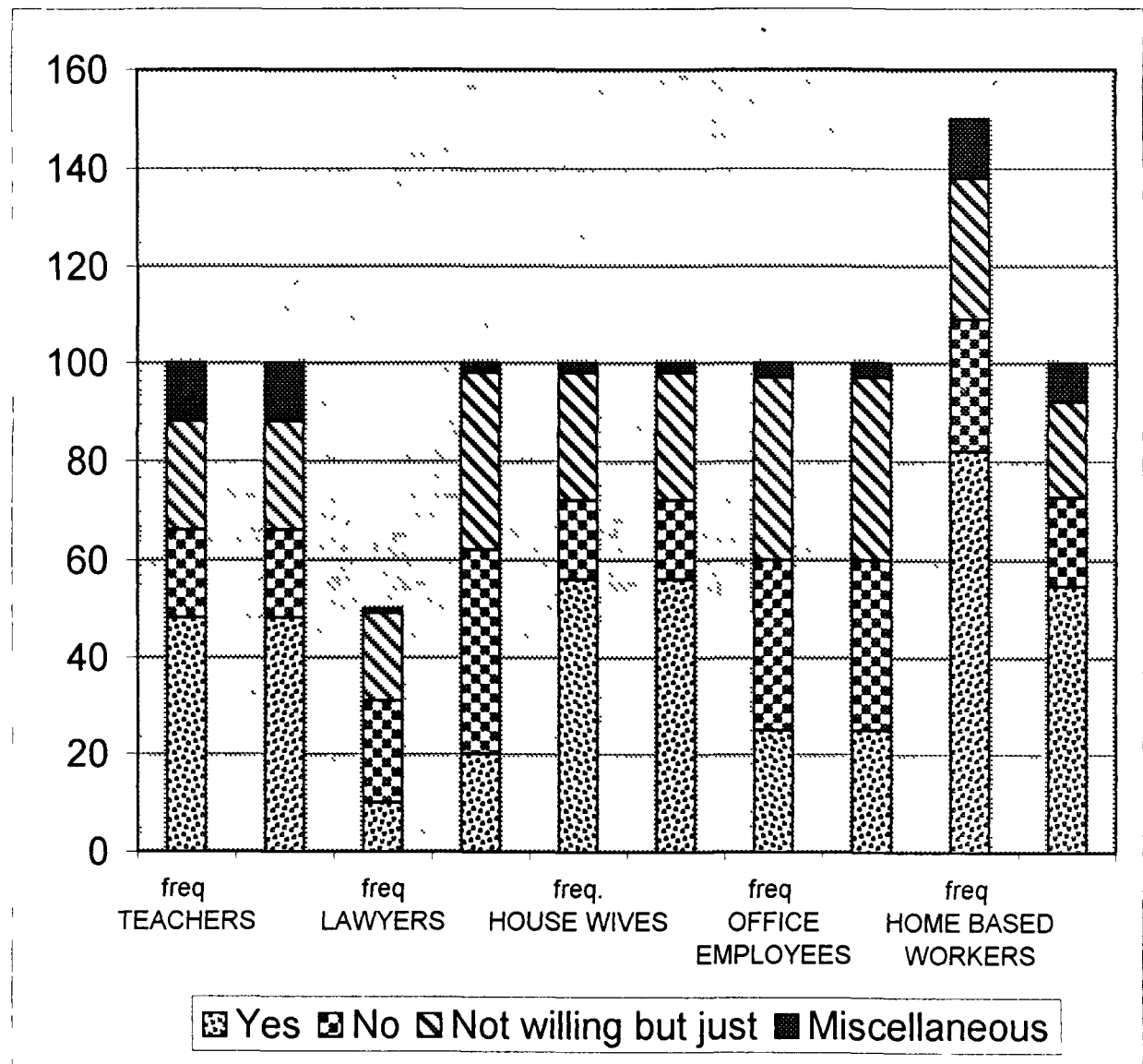


TABLE 5 5

MARRIAGE CONTRACTED BETWEEN RELATIVES

ITEM NO	MARRIAGE BETWEEN RELATIVE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	48	48	10	20	56	56	25	25	82	54 67
2	No	18	18	21	42	16	16	35	35	27	18
3	Not willing but just to Obey Parents	22	22	18	36	26	26	37	37	29	19 33
4	Miscellaneous	12	12	1	2	2	2	3	3	12	8
	TOTAL	100	100	50	100	100	100	100	100	150	100



and civil Marriage only 2%. Amongst lawyers class popular type of marriage is also nikah as 54% and love marriage cum nikah 34%. In office employees it counts as 76% in form of nikah, 15% in form of love marriage cum nikah. Amongst housewives 76% in form of nikah and 15% in form of love marriage cum nikah. Position in housewives counts as 70% in form of Nikah and 16% in form of love marriage cum nikah.

Lastly in home based workers second popular type is customary marriage counts as 31.3%, and in form of nikah counts as 67.3%.

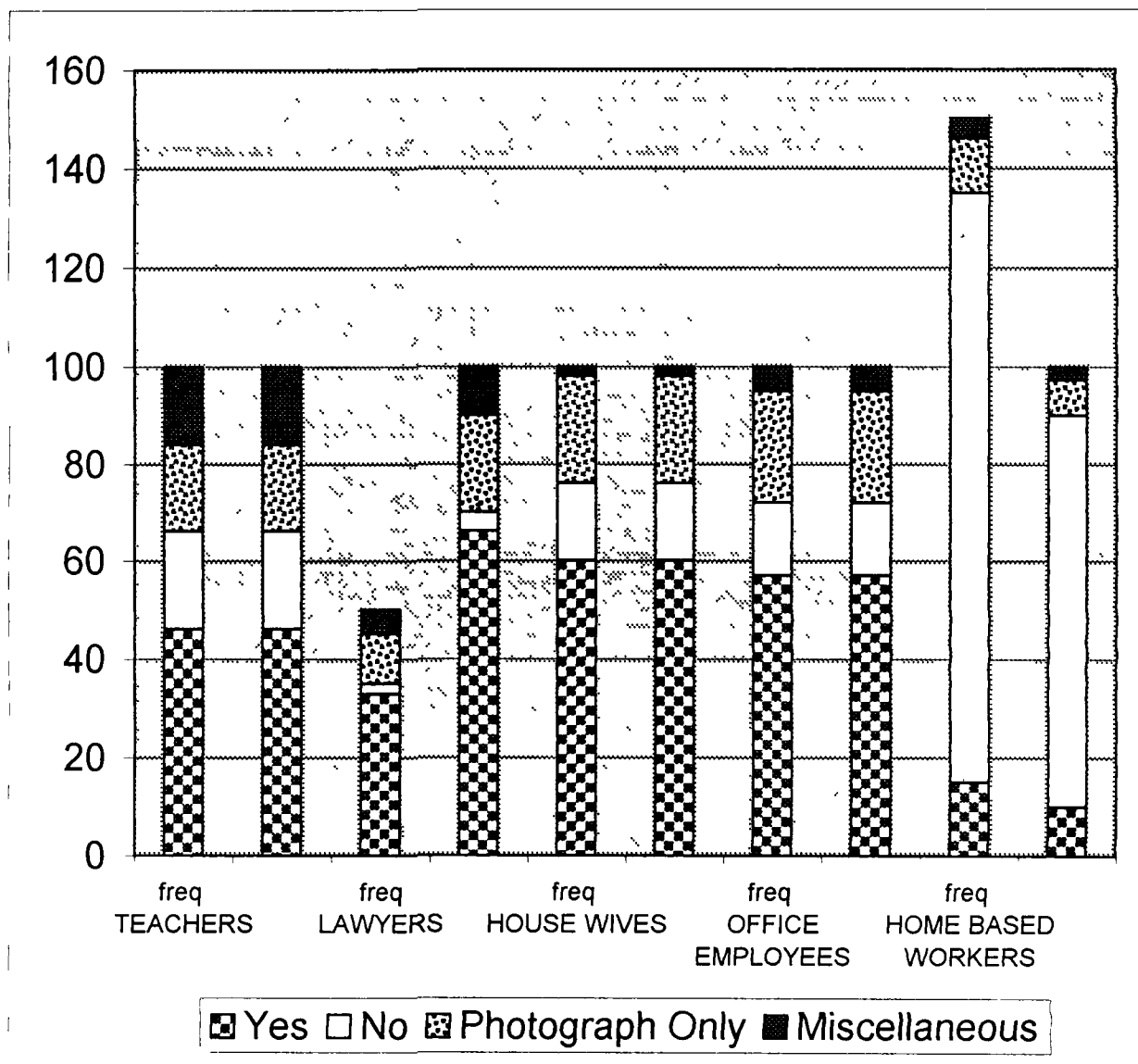
Thus from the above interpretation of the data, even in highly educated women popular type of marriage is still nikah. As mentioned earlier, Islam does not encourage rituals of any kind and in all its ceremonies there is an effort to minimize rituals. The Muslim marriage is contractual in nature, in which both the parties have to agree on the terms of marriage, which are verbally announced to the respective bride and groom. The written agreement is called nikahnama, which is signed by either witnesses of bride and groom respectively.

Table 5.5 shows that amongst teachers class 48% are agree to contract marriage between relations, 18% not agree and 22 % are those women they are not willing but just to obey their parents wishes they go for marriage with relatives. In lawyers class marriage contracted with relatives counts as 20% those are willing,

TABLE 5.6

SEEN HUSBAND UNDER THE MARRIAGE CONTRACT

ITEM NO	TO SEE HUSBAND	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	46	46	33	66	60	60	57	57	15	10
2	No	20	20	2	4	16	16	15	15	120	80
3	Photograph Only	18	18	10	20	22	22	23	23	11	7 33
4	Miscellaneous	16	16	5	10	2	2	5	5	4	2 67
	TOTAL	100	100	50	100	100	100	100	100	150	100



42% counts as those are not willing and 36% comes under third category where women are not willing but just to obey their parents they were agree for it. Amongst office employees, those affirms such marriage counts as 25%, those not affirm counts as 35%, and lastly those go for it according to their parents wishes rates as 37%. Home based workers frequency about yes is 54.6%, about no is 18% and about third option this is 19.3%.

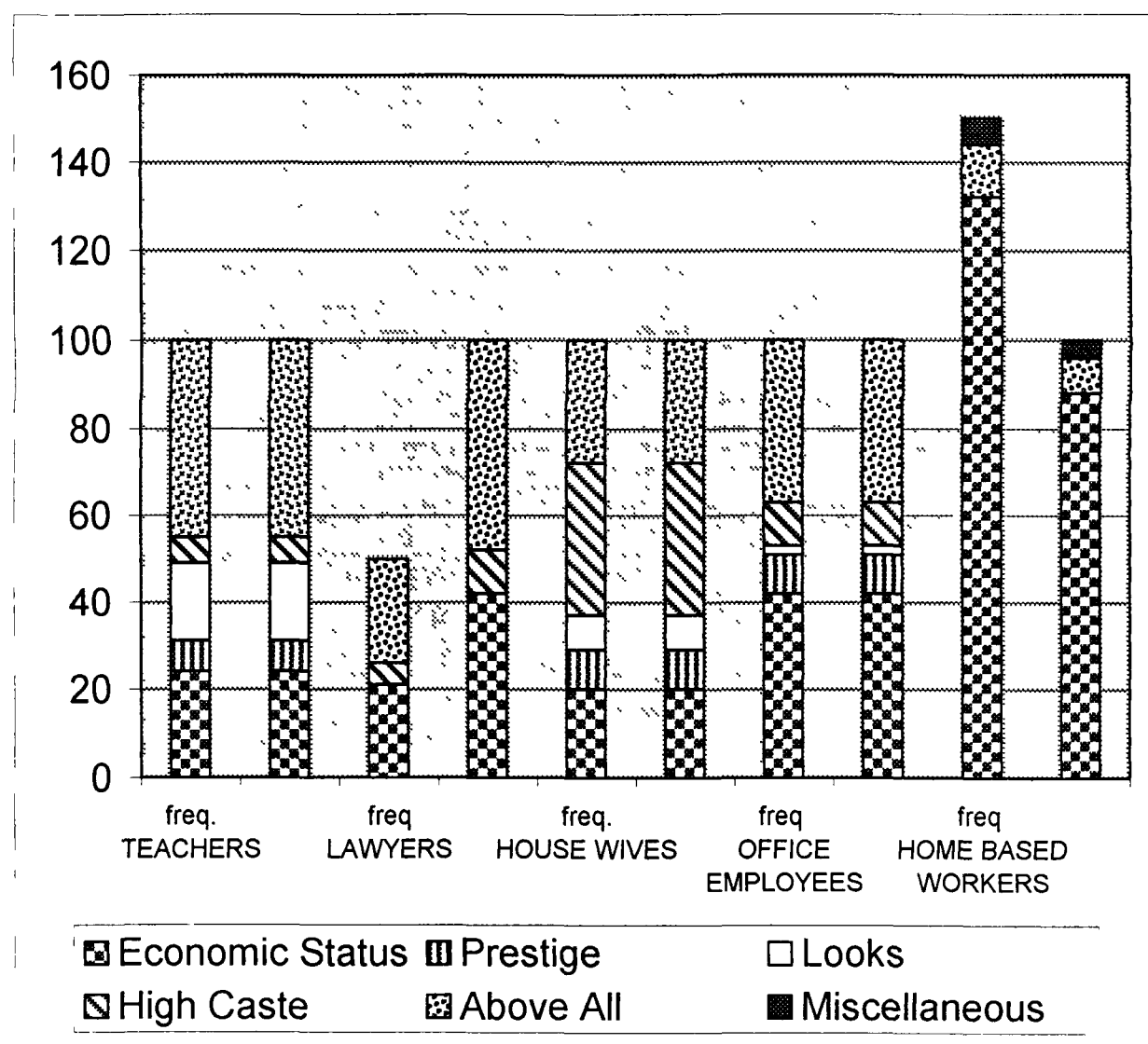
From the above data we can easily interpret that as we know most interesting feature of marriage among Muslims is the practice of marriage among cousins. The Muslim considers it to be obligatory to choose a spouse from among their cousins. But how mostly women dislike marriage with in their relatives, but many of them they are not willing but submit their wishes to their parents wishes.

In response to table 5.6, whether women see her husband before marriage negotiations. Frequency amongst teachers who says yes lies as 46%, those says no lies as 20% those see only photograph during negotiations counts as 18%. In lawyers category those says yes counts as 66%, those says no counts as 4% and lastly those see only photograph counts as 20%. In office employees category frequency of yes counts as 57%, frequency of no counts as 15% and frequency of those see photograph only counts as 23%. In Housewives category those say yes counts as 60%, those says no counts as 16% and lastly those see her husband

TABLE 5.7

CONSIDERATIONS TAKEN INTO ACCOUNT DURING MARRIAGE NEGOTIATIONS BY THE PARTIES

ITEM NO	CONSIDERATION	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Economic Status	24	24	21	42	20	20	42	42	132	88
2	Prestige	7	7	0	0	9	9	9	9	0	0
3	Looks	18	18	0	0	8	8	2	2	0	0
4	High Caste	6	6	5	10	35	35	10	10	0	0
5	Above All	45	45	24	48	28	28	37	37	12	8
6	Miscellaneous	0	0	0	0	0	0	0	0	6	4
	TOTAL	100	100	50	100	100	100	100	100	150	100



before marriage counts as 22%. In Home based workers category, yes counts as 10%, no counts as 80% and finally those see photograph counts as 7.3%.

The following table 5.7, gives the detail regarding considerations taken into account during marriage negotiation by the parties. As in the teacher class frequency about to prefer economic status category is 24%, those go according to prestige counts as 7%, those go in accordance with looks count as 18%, those see high caste rate as 6% and lastly those see above all qualities counts as 45%. Amongst lawyers category it indicates as per economic status counts 42%, as per high caste counts 10% and those see all the qualities counts as 48%. In office employees category those they are prefer in accordance with economic status shows as 42% and those show all the above mentioned qualities counts as 37% rest are very insignificant responses. In housewives responses those see economic status counts as 20%, those go as per high caste counts 35% and lastly those are taken into consideration all the above mentioned qualities counts as 28%. In home based workers highest frequency 88%, shown amongst those they go for the economic status because they belong to very low class of the society.

Discussion :

A comparative analysis from above mentioned tables inferred that in Islam marriage is viewed as an essential normal

function of a human individual, even the founder of this religion, the Prophet (SAW), enjoyed the pleasures of domestic life. The religious texts of Islam make it obligatory for man to get his sisters and daughters married. Thus, it is usually said that in Muslim family right at the time of birth of girl marriage negotiations commence. For this statement it should not be concluded that the daughters are sort of liability for the parents. Right at the birth of the girl the parents become worked up to arrange for a match for the daughter. The father is usually proud of his daughters in the sense that he has never to go looking for a groom, instead the boy's father have to actually look for suitable brides and sent their offer. If offer accepts the initial formalities regarding marriage negotiations over. Here main emphasis lies on the final decision. The important duty is carried out by the elder family members on whose judgement the entire family can depend, usually it is found that the male members of the family are accorded this responsibility. Women of today even no say during marriage transactions. But even if a woman got a chance to select a man she was not always successful in marrying him. Very few woman go for love cum arrange marriage. Women in the sample desired had decided to marry a particular man of their own choice, but due to opposition from the family members they could not marry them. So this part of discussion prove our hypotheses for this study.

VI. Standard Nikah Nama

This part deals about awareness and acceptance of Nikahnama made by Muslim Personal law board by Muslim women and ulema and to assess the attitude of all the respondents, whether there is need to reform ?, knowledge about compulsory registration of marriage, mode of mahr payment etc. Muslim marriage is contractual and during the nikah ceremony the whole emphasis is placed on signing of the contract and its contents, which is referred as nikah-nama. The contract is usually printed in golden letters, the script in Arabic or Urdu. Before signing, the permission of girl is taken. The Qazi who presides over the marriage enters into bride's place accompanied by two witnesses and announces to the girl that she is to be married to such an such person's son, who is willing to give a certain amount of mahr. The girl has to give her consent verbally and only when Qazi and witnesses hear her they go back to gathering where the bridegroom is waiting and announce that the girl has given her consent. At this time some girls become very nervous and have fits of crying in such cases the agreement is by proxy. This necessity of taking girl consent in marriage implies the importance attached to the girl's opinion. Therefore, there has been no case of girl who refusing marry, yet the idea was mainly to emphasize the individuality of the person getting married. This is always done prior to signing of the nikahnama which further confirm the fact that Muslims give a distinctive identity to the women folk, and give her right and authority to assert it when

STANDARD NIKAH - NAMA

TABLE 6.1

KNOWLEDGE ABOUT CONTENTS OF THE NIKAH - NAMA

ITEM NO	CONTENTS	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	40	40	39	78	21	21	39	39	2	1.33
2	No	53	53	5	10	61	61	59	59	148	98.67
3	Miscellaneous	7	7	6	12	18	18	2	2	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100

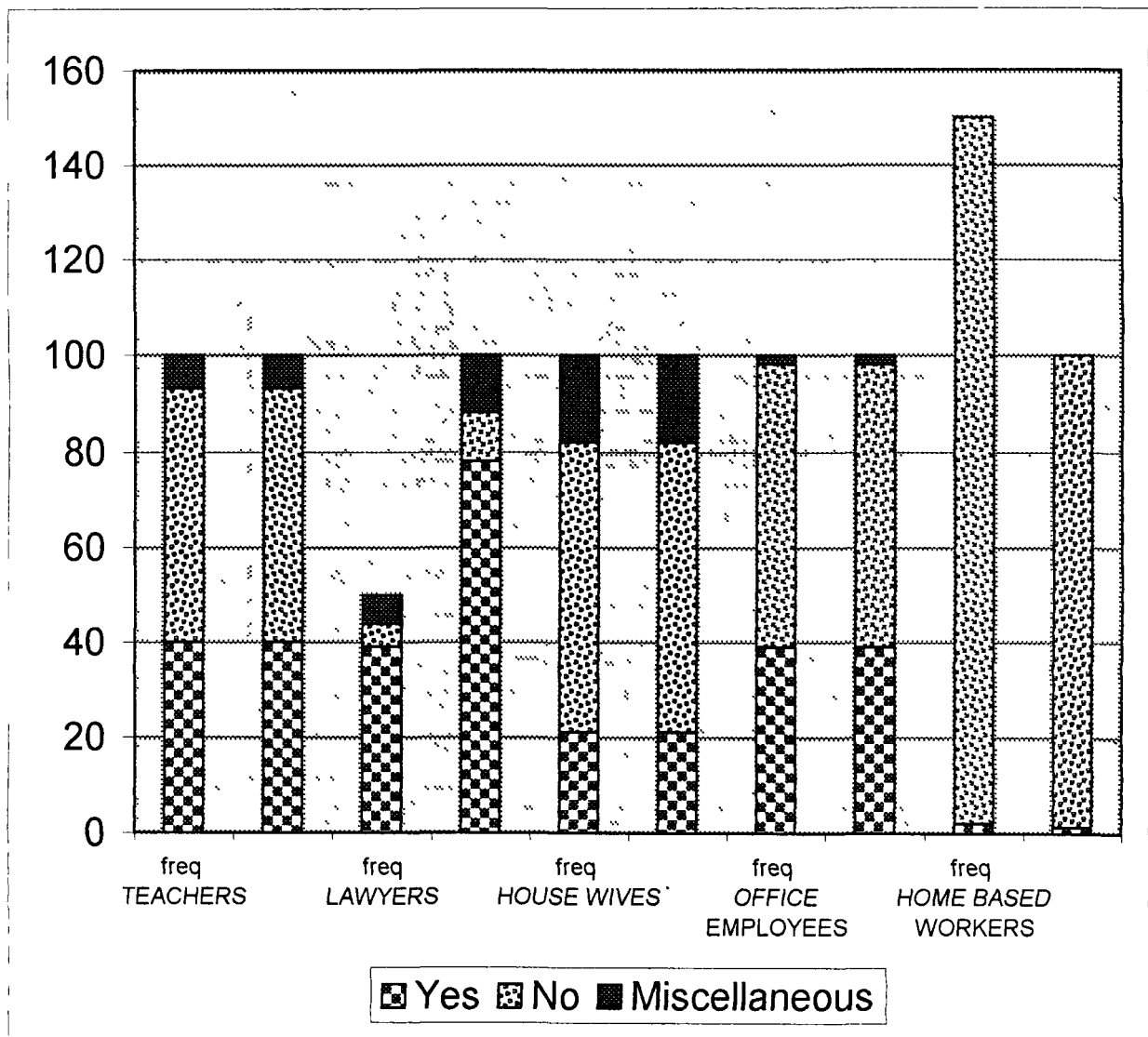
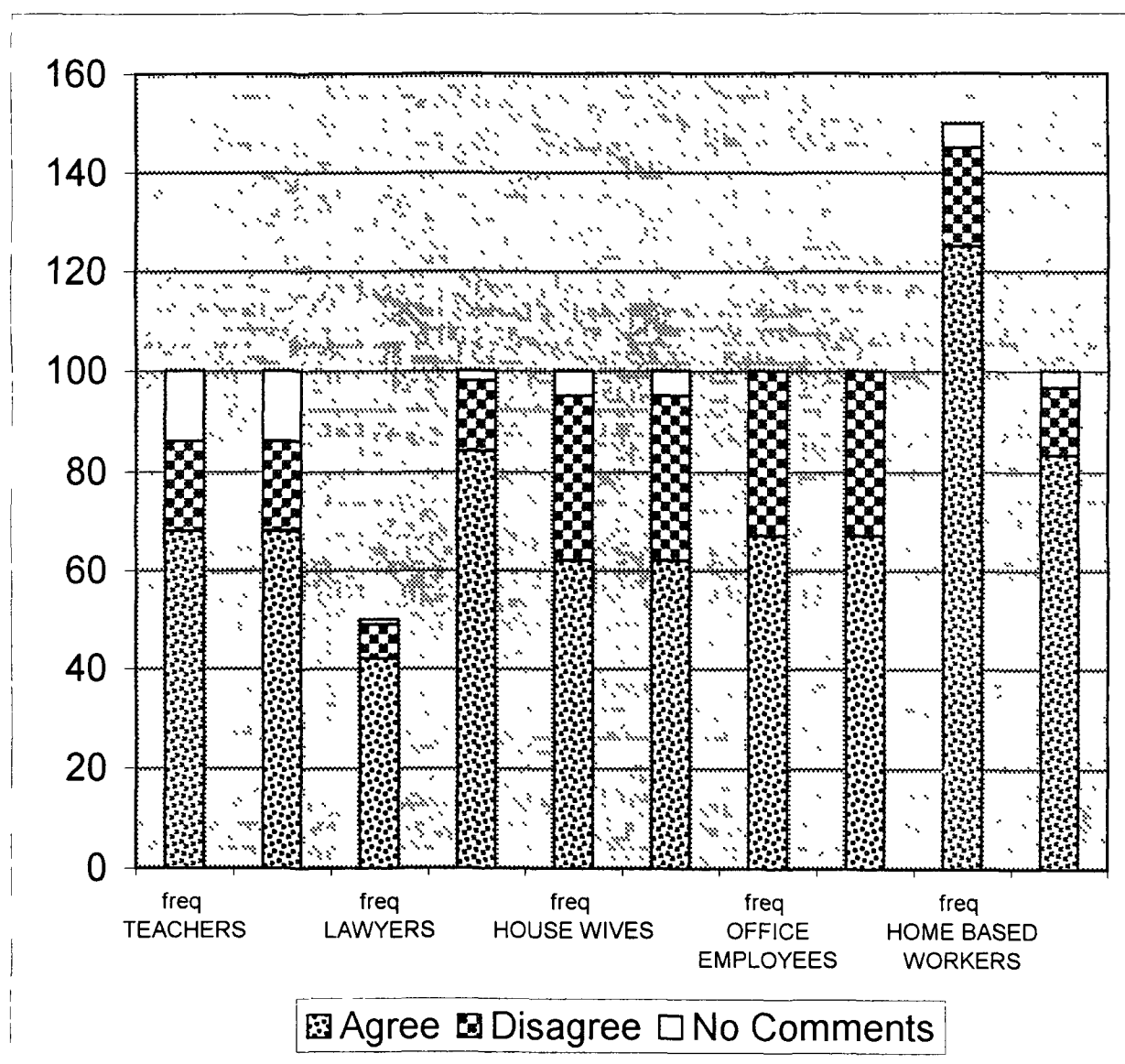


TABLE 6 2

ACCEPTANCE OF THE STANDARD NIKAH -NAMA

ITEM NO	ACCEPTANCE TYPE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Agree	68	68	42	84	62	62	67	67	125	83.33
2	Disagree	18	18	7	14	33	33	33	33	20	13.34
3	No Comments	14	14	1	2	5	5	0	0	5	3.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



needed. In actual practice the particular meaning attached to the act is lost and this becomes one of the essential marriage rites. Most of the women have never given it a thought and cannot imagine that they could have refused to marry, because they know that they would have had to reply in the affirmative. Apart from this, many of them informants do not know whether the marriage contract written in form.

The Table 6.1, indicates the frequency about the awareness of contents of the standard nikahnama. This table shows that those says yes in teachers category counts as 40% and those says no counts as 53%. In lawyers category it can be said that those says yes counts as 78% and those say no counts as 10% only. Among office employees category frequency of yes is 39% and frequency of no is 59%. Position among house wives those says yes counts as 21%, and those says no counts as 61%. Home based workers are totally unaware with the contents of standard nikahnama and counts as 98.6% and rest 1.3% those says yes.

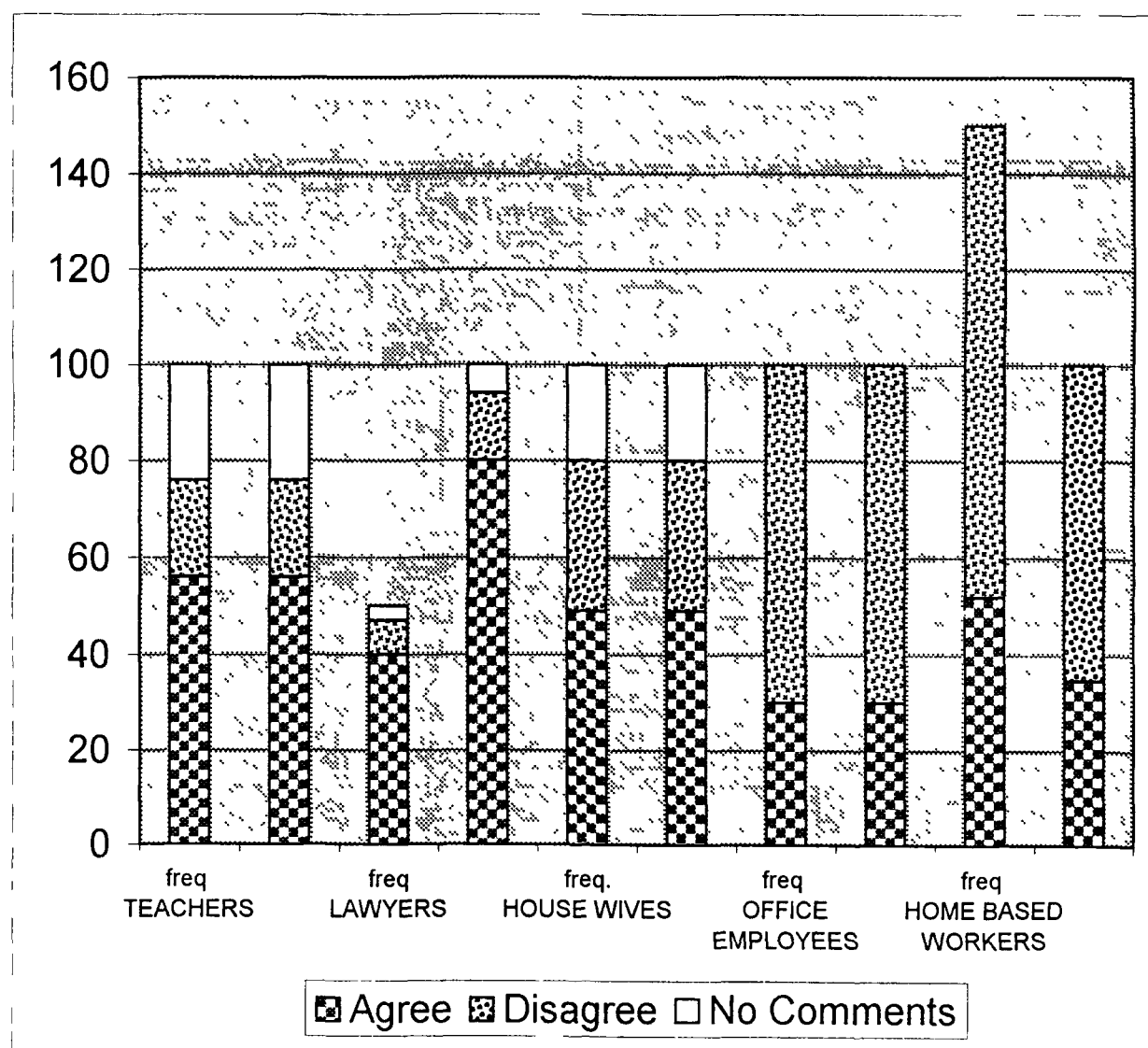
This table shows very surprising results that even married women are not aware with the contents of nikahnama. Apart from this, majority of the respondents of all do not know whether the marriage contract (nikahnama) was in written script.

The Table 6.2 indicates the frequency about acceptance of nikahnama under all the categories. In teachers categories we seen as, those are agreed to accept nikahnama counts as 68% and those

TABLE 6 3

ACCEPTANCE OF THE NIKAH-NAMA BY COMBINED EFFORTS OF MPLB* AND WOMEN GROUPS

ITEM NO	ACCEPTANCE TYPE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Agree	56	56	40	80	49	49	30	30	52	34.67
2	Disagree	20	20	7	14	31	31	70	70	98	65.33
3	No Comments	24	24	3	6	20	20	0	0	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



are disagreed count as 18%. Under lawyers category this counts as 84% are those reply in affirmative and 14% are those reply in negative. In housewives category 62% reply in positive form and 33% reply in negative form. The responses in office employees class shows the trend as those are ready to accept counts as 67% and those are not ready to accept counts as 33%. In housewife and home based workers classes responses for affirmation counts as 62% and 83.3%. In case of negation counts as 33% and 13.3%, respectively.

The table 6.3, counts the responses of all the categories about acceptance of nikahnama made by combined efforts of Muslim Personal law board and by women groups. The trend shown in the teachers category indicates as 56% those are agree for it and 20%, those are not agree for it. The responses of lawyers rates as 80% counts for agreement and 14% counts for disagreement. In office employees class frequency shows as 30% those are agreed for it and 70% those are disagree for it. The responses under housewives and home based worker indicates the trend as 31% and 65% those are not agreed and those agree for it indicates as 49% and 34.6%. It indicates from both categories they have similar type of responses. Education and employment may be count as a factors for that type of findings.

This table 6.4 indicates the trend about the acceptance of nikahnama made by all the three bodies namely, Muslim personal law board, women groups and ulema (Islamic scholars). The

TABLE 6.4

ACCEPTANCE OF NIKAH-NAMA MADE BY THE MPLB*, WOMEN GROUPS AND ULEMA

ITEM NO	ACCEPTANCE TYPE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Agree	52	52	42	84	57	57	69	69	117	78
2	Disagree	22	22	4	8	23	23	30	30	23	15.33
3	No Comments	26	26	4	8	20	20	1	1	10	6.67
	TOTAL	100	100	50	100	100	100	100	100	150	100

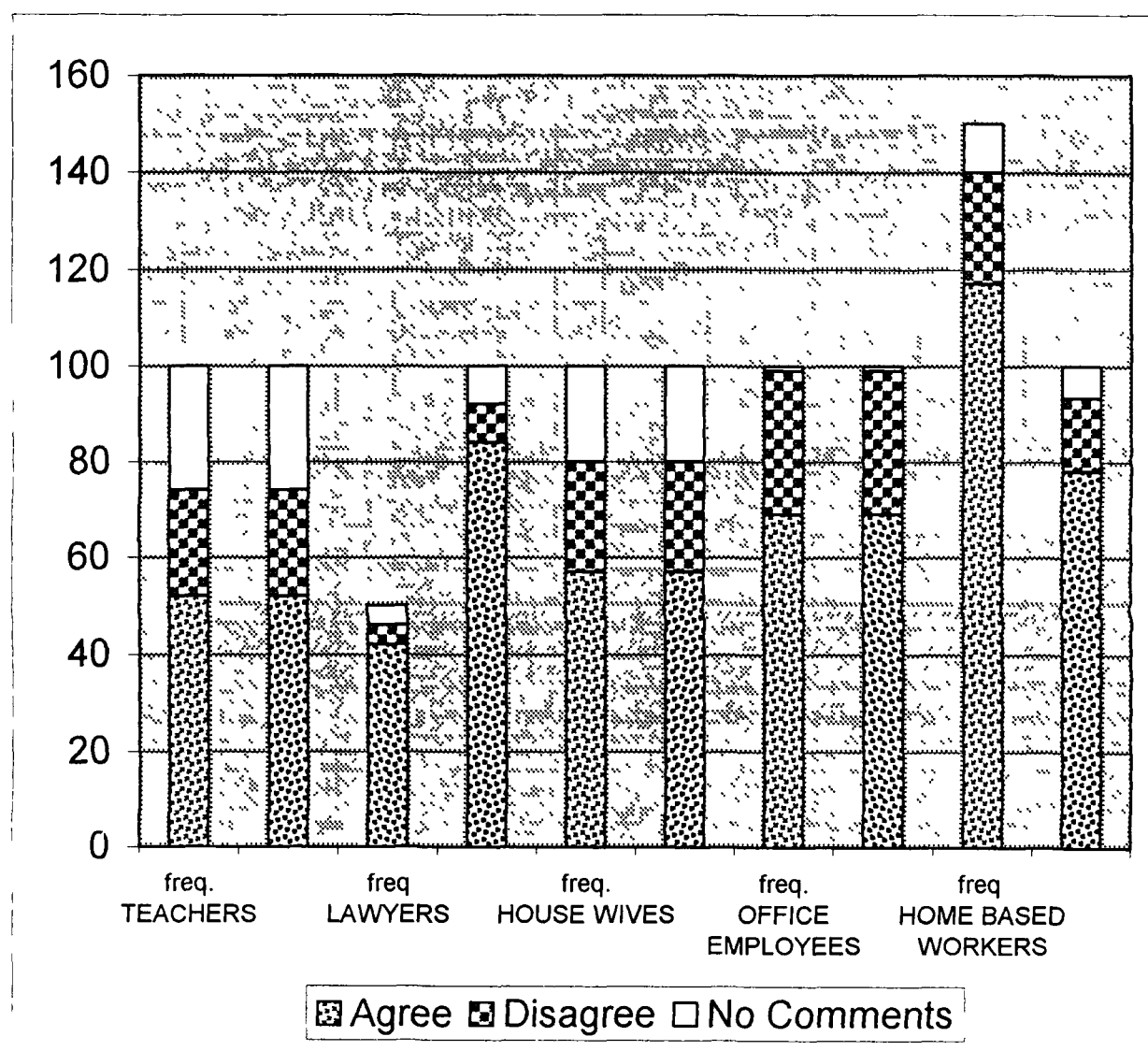
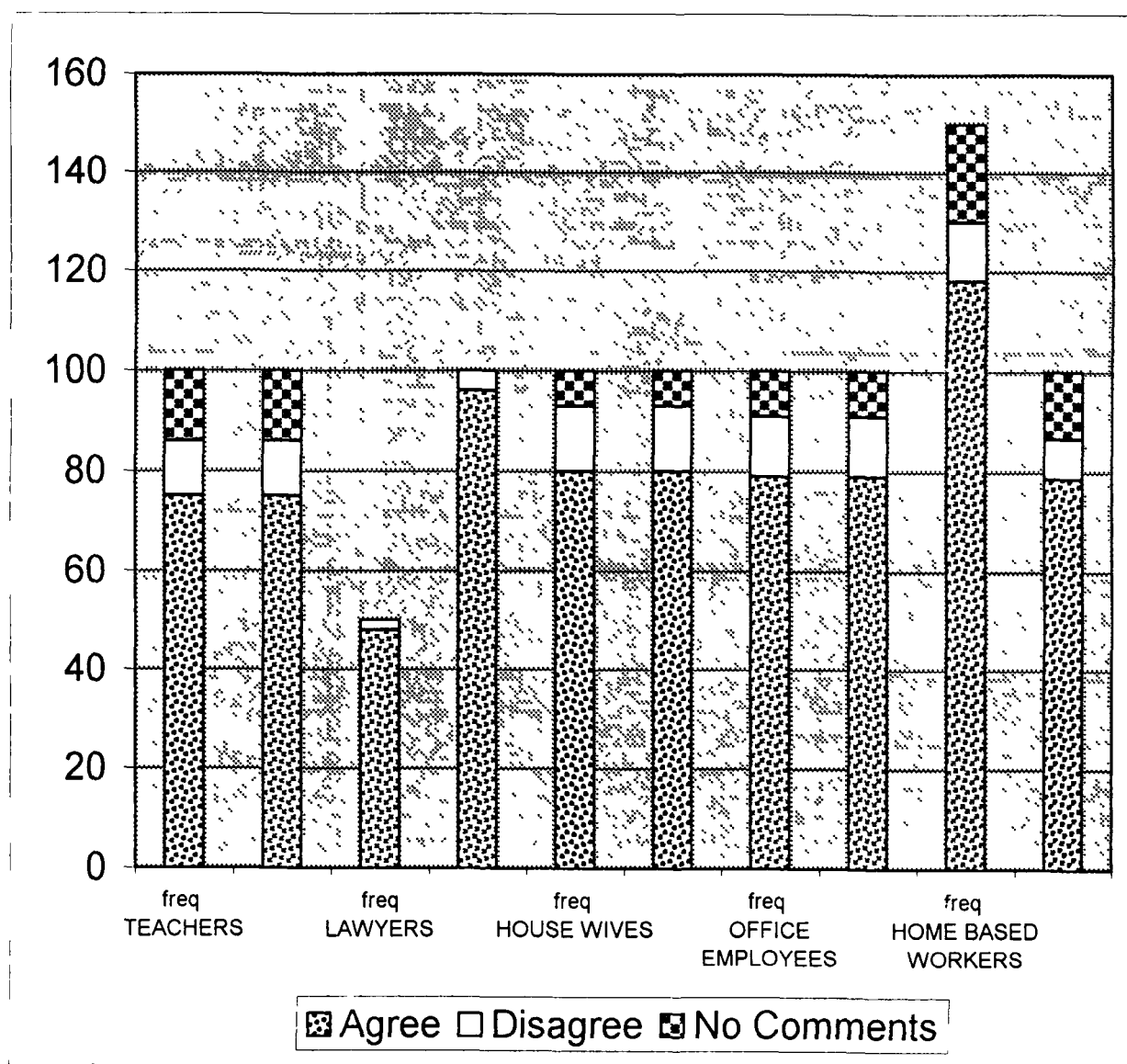


TABLE 6.5

COMPULSORY REGISTRATION OF MARRIAGE

ITEM NO	MARRIAGE REGISTRATION	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Agree	75	75	48	96	80	80	79	79	118	78.67
2	Disagree	11	11	2	4	13	13	12	12	12	8
3	No Comments	14	14	0	0	7	7	9	9	20	13.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



responses in the teachers class shows as 52%, those are agreed and 22%, those are not agreed. In lawyers class these responses counts for agreement as 84% and counts for disagreement as 8%. It can be seen that in lawyers class variation in between both the responses are very high. Perhaps awareness about laws and higher education has some influential factors for this. In office employees class the frequency of the respondents those are agreed counts as 69% and those are not agreed counts as 30%. The trend in housewives and home based worker classes are as, in both the classes those are agreed for change counts as 57% and 78%. Those are not agreed in both the categories counts as 23% and 15.3%.

A comparative analysis of tables 6.2, 6.3 and 6.4 shows that all the respondents would like to accept standard nikahnama but their frequencies of acceptance varies from each others. However, it is interesting to note that in spite of equality between both the sexes in the marriage rite, so far as I have not come across any women witness to sign nikahnama. Though equality of men and women has been preached by Prophet (SAW). Yet in actual day to day behaviour it is the man who has a hold over almost all areas of interaction., due to this reason and in spite of all legislative sanctions in most areas, the women are always in the backside.

The table 6.5, talk about compulsory registration of marriage contract under all the five categories. The category of teachers shows a the responses of those they are agree for compulsory registration is 75% and those are not agree for it 11%.

TABLE 6.6

TO INCORPORATE CONDITIONS FOR TRIPLE TALAQ IN NIKAH - NAMA

ITEM NO	CONDITION	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq	%age
1	Agree	38	38	37	74	44	44	39	39	118	78.67
2	Disagree	28	28	9	18	35	35	27	27	9	6
3	No Comments	34	34	4	8	21	21	34	34	23	15.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

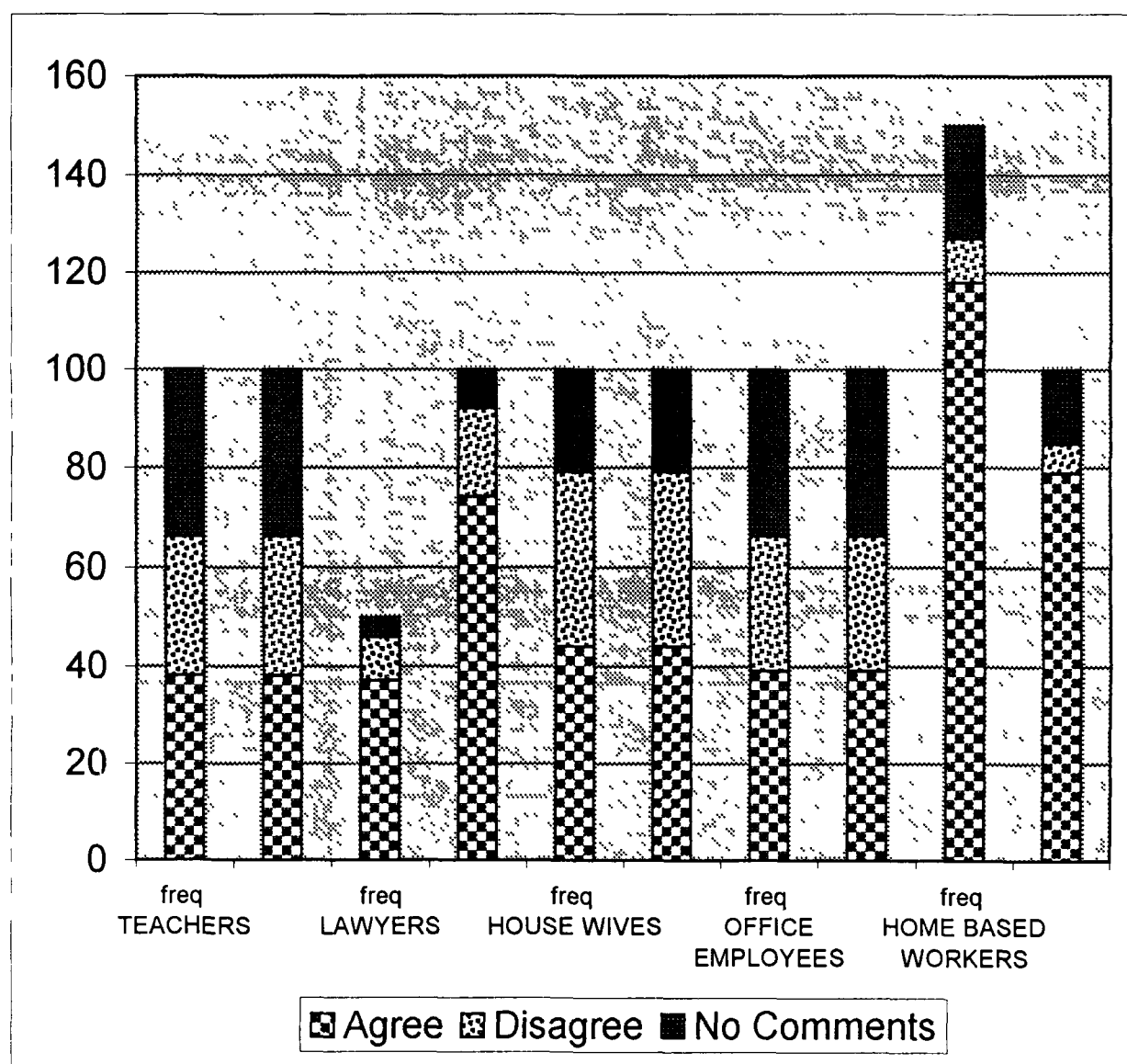
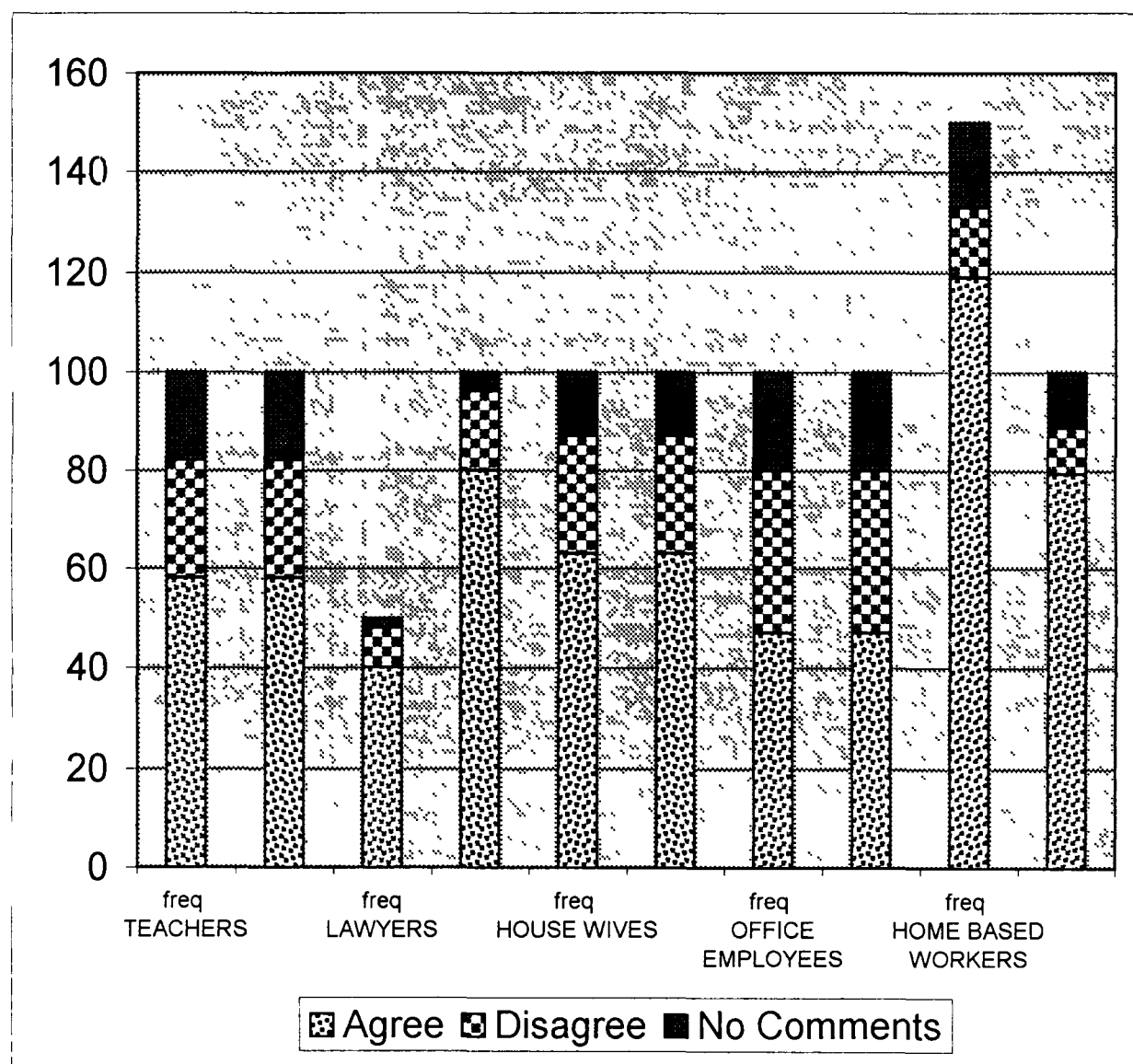


TABLE 6.7

TAKING MAINTENANCE IN CASE OF DISPUTE

ITEM NO	TAKING MAINTENANCE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Agree	58	58	40	80	63	63	47	47	119	79 33
2	Disagree	24	24	8	16	24	24	33	33	14	9 33
3	No Comments	18	18	2	4	13	13	20	20	17	11 34
	TOTAL	100	100	50	100	100	100	100	100	150	100



In lawyers category the responses of those respondents they are agree for it counts as 96% and those are not agree counts as 4%. In office employees those are agree for it counts as 79% and those are not agree for it counts as 12%. In housewives and home based workers those are agree for it counts as 80%. and 78.6% and those are to agree for it counts as 13% and 8% respectively.

In table 6.6, indicates the frequencies about to incorporate conditions for triple talaq in nikahnama and shows responses of all the categories. The first category of teachers shows the trend that those reply affirmatively rates as 38% and those reply negatively rates as 28%. In lawyers class responses of yes counts as 74% and responses of no counts as 18% from out of total frequency. In office employees class the responses of yes indicates as 39% and responses of no indicates as 27%. In housewives and home based workers classes the responses of yes counts as 44% and 78.6% and response of no counts as 35% and 6% respectively.

The table 6.7, shows about the position of taking maintenance in case of dispute in all the respondents. The teachers category indicate the responses in the form of affirmation counts as 58% and in the form of negation counts as 24%. In lawyers category the responses of yes counts as 80% and responses of no counts as 16%. In office employees category those respondents are agree to take maintenance in the case of dispute counts as 47% and in case of disagree counts as 33%. In the last two categories viz; housewives and home based workers indicates following trend.

TABLE 6.8

REFORMS UNDER STANDARD NIKAH - NAMA

ITEM NO	REFORMS	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq.	%age
1	Agree	50	50	43	86	73	73	72	72	117	78
2	Disagree	30	30	6	12	15	15	19	19	31	20.67
3	No Comments	20	20	1	2	12	12	9	9	2	1.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

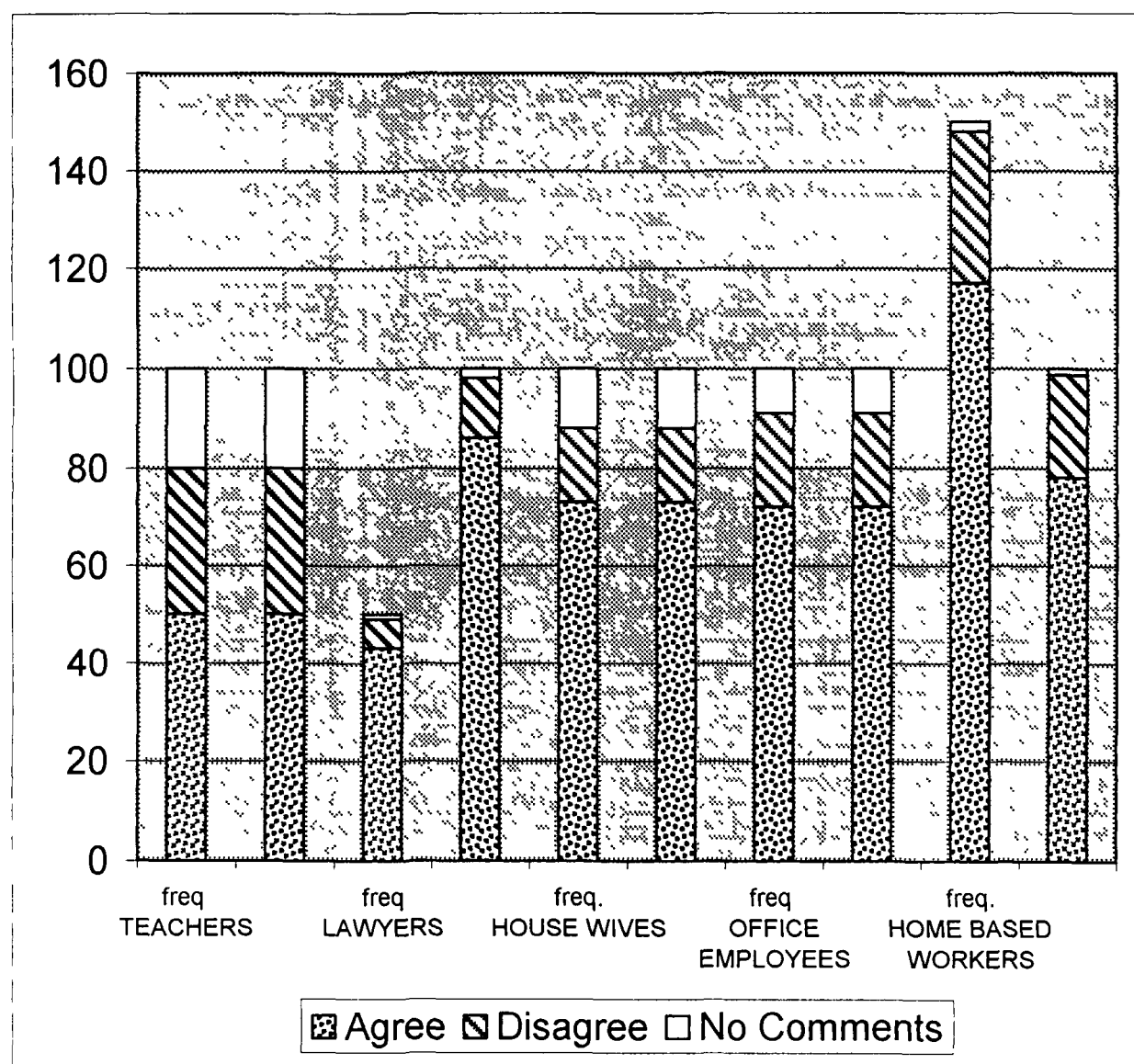
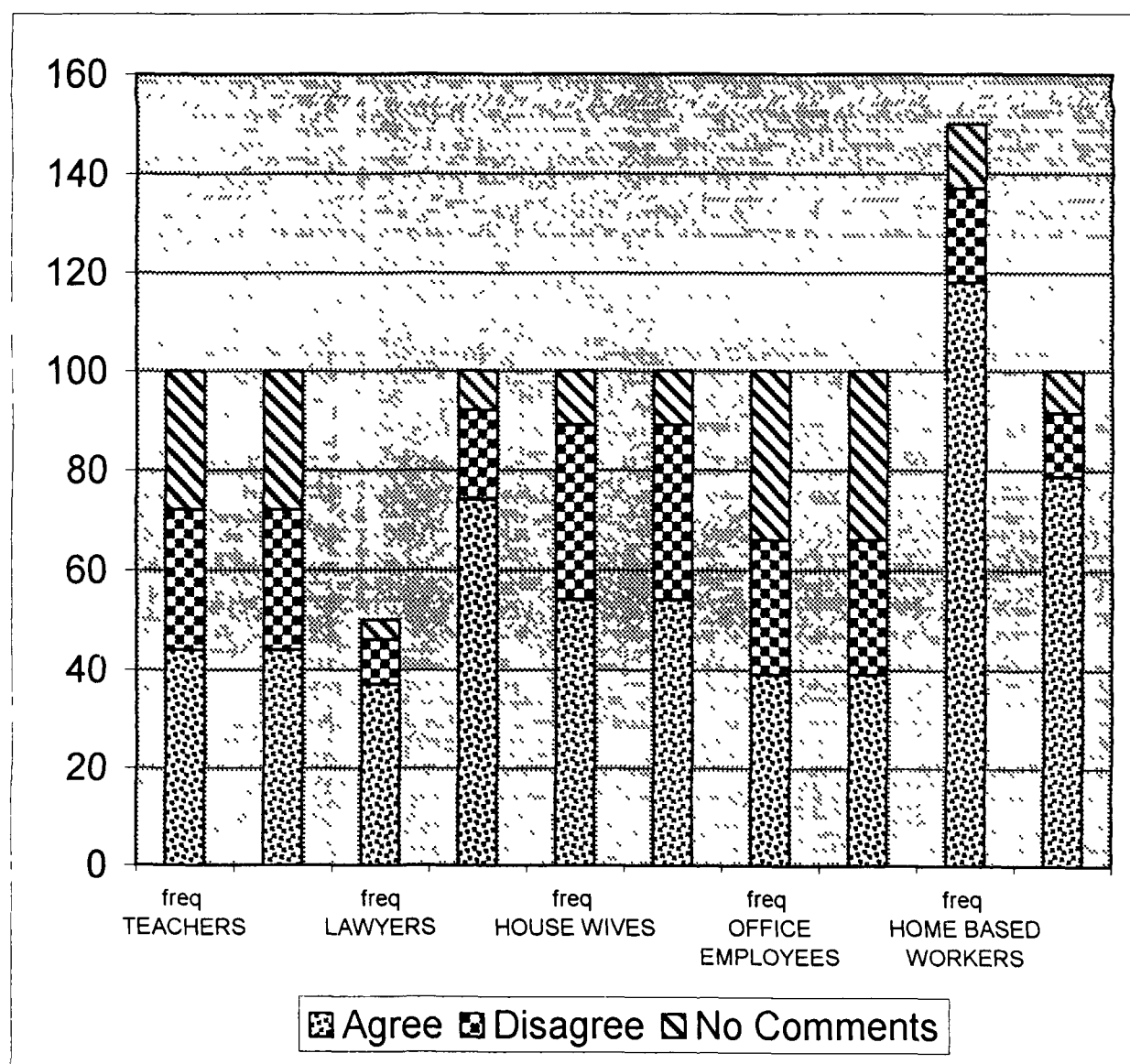


TABLE 6.9

TO ADD CLAUSE IN MARRIAGE CONTRACT UNDER EXISTING LAW

ITEM NO	ADD CLAUSE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Agree	44	44	37	74	54	54	39	39	118	78.67
2	Disagree	28	28	9	18	35	35	27	27	19	12.67
3	No Comments	28	28	4	8	11	11	34	34	13	8.66
	TOTAL	100	100	50	100	100	100	100	100	150	100



Those are agree for it represent as 63% and 79.3%. And in case of when respondents shows disagreement for it represent as 24% and 9.3%.

Table 6.8 indicates about the frequency of acceptance of response in standard nikah-nama by all the categories of respondents. The teachers category agree for reform as 50% and disagree for reform as 30% In second category i.e. lawyers shows the frequency of yes as 86% and frequency of no as 12%. In the case of office employees trend is as for affirmation is 72% and for negation is 19%. In last two categories that is housewives and home based workers these counts as those are agree for the reforms represent as 73% and 78% and those are disagree represent as 15% and 20.6% respectively.

Table 6.9 talks about to add a clause in marriage contract under existing laws. Under all categories. The teachers responses as an yes counts as 44% and counts no as 28%. In Lawyers these responses in form of agreement counts as 74% and in form of negation as 18%. In office employees responses of yes counts as 39% and responses of no counts as 27%. In housewives and home based workers classes in form of agreement these counts as 54%, 78.6% and in for of disagreement counts as 35% and 12.6%.

Thus, we can easily interpret from above table that the frequency of reforms under standard nikahnama is high in all the categories in comparison to one another when the frequency for

TABLE 6 10

MODE OF MAHR AMOUNT IN ACCORDANCE WITH SHARIAH

ITEM NO	MODE OF PAYMENT	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq.	%age
1	Agree	59	59	42	84	78	78	67	67	104	69.33
2	Disagree	32	32	7	14	13	13	4	4	42	28
3	No Comments	9	9	1	2	9	9	29	29	4	2.67
	TOTAL	100	100	50	100	100	100	100	100	150	100

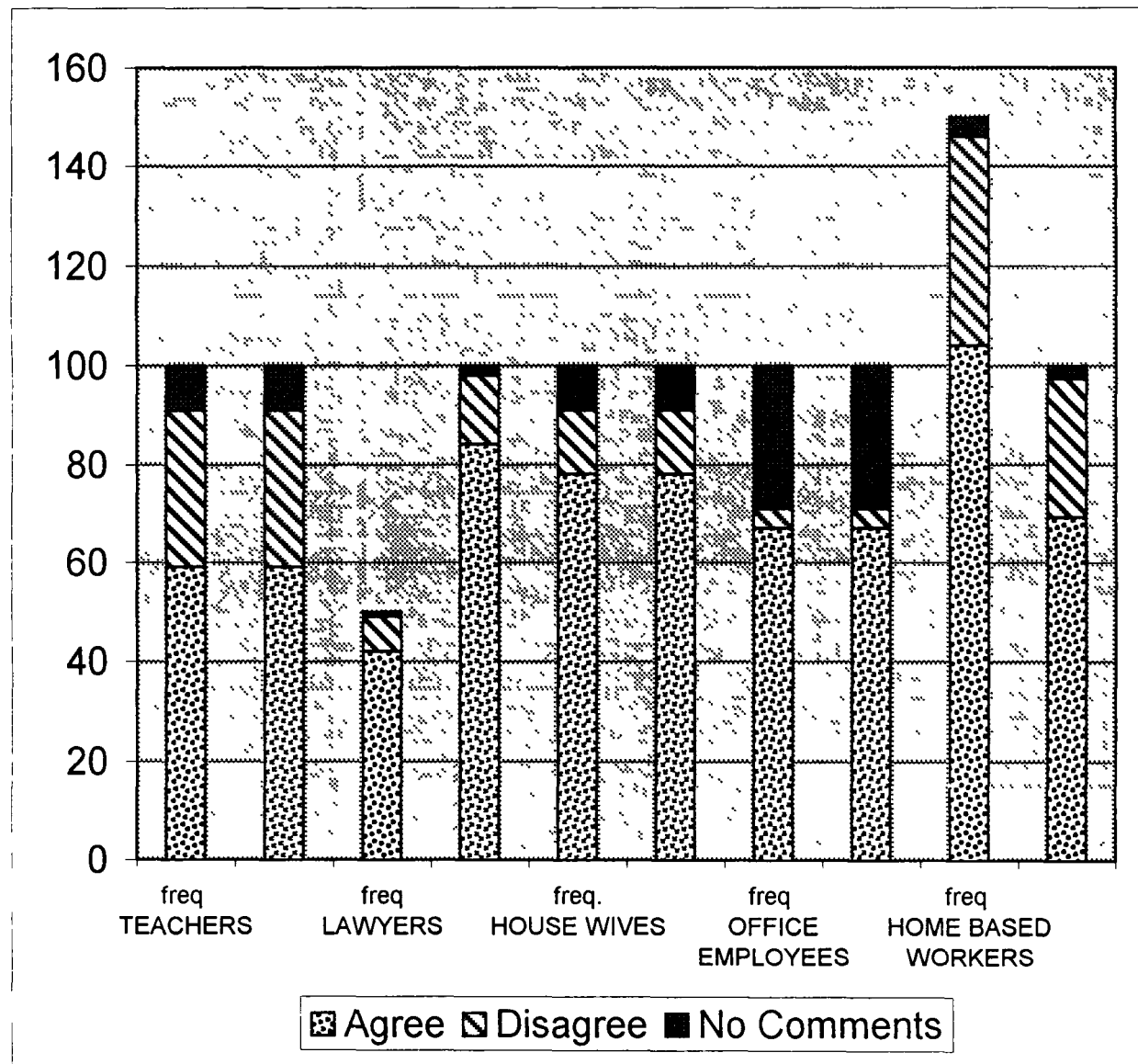
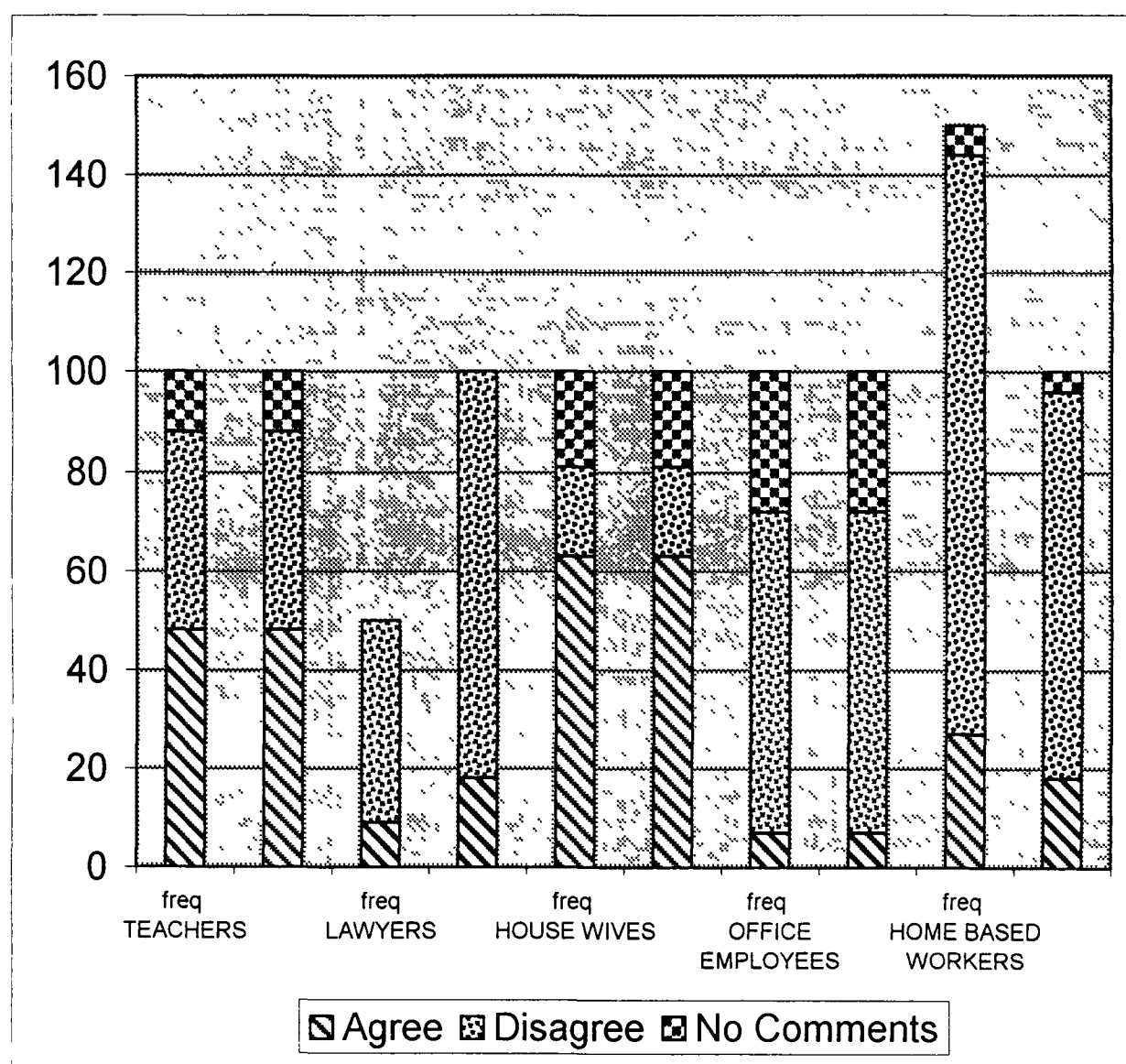


TABLE 6.11

MODE OF PAYMENT ACCORDING TO THE RESPONDENT WISHES

ITEM NO	ACCEPTANCE TYPE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Agree	48	48	9	18	63	63	7	7	27	18
2	Disagree	40	40	41	82	18	18	65	65	117	78
3	No Comments	12	12	0	0	19	19	28	28	6	4
	TOTAL	100	100	50	100	100	100	100	100	150	100



reforms are in disagree form.

The responses under table 6.10, shows the mode of taking of Mahr amount in accordance with Shariah in all the categories of the respondents. In teachers class those are agree to take mahr in accordance with Shariah is high among those are as 59% in comparison to those are not agree as 32%. In lawyers class responses of yes are 84% and responses of no are 14%. In office employees class responses of yes counts as 67% and responses of no counts as 4%. In last two classes namely, housewives and home based workers, responses of yes are as 78% and 69.3% and responses of no are as 13% and 28%.

The table 6.11, talks about the mode of payment of mahr according to respondents wishes in all the three categories. In teachers responses, of yes counts as 48% and responses of no 40%. In lawyers responses of yes is 18% and responses of no is 82%. Under office employees class responses of yes is 7% and responses of no is 65%. In rest of two categories namely, housewives and home based workers, responses of affirmation rates as 63% and 18% and in responses of negative rates as 18 and 78%. The over all trend among all the respondents is not similar to one another.

Discussion

It can be inferred from above table that the mode of payment of mahr among all the respondents in both forms those are agree or those are not agree have fluctuations in the responses.

Some are agree for it but other same time not agree for it. As in Islam mahr should be paid at the time of marriage, and normally practice is different. The law allows for mahr to be paid any time during the existence of the marriage; and, on the husbands death, a woman can demand for her mahr if this has not been paid in the course of time. In the event of divorce, mahr must be paid immediately, if has been deferred at the time of marriage, according to Qazi of district Aligarh, we met, such cases are very common. One more thing, we have seen that the law and customary practice have both accommodated the possibility of the husband not paying mahr at all. And, in any case, if the mahr amount is a positive thing for women, it has been scaled down and thus trivialised to such an extent that it hardly makes any but the most ritual difference if the woman is not given up her mahr. Mahr assumes a significance for women's absolute rights because of the clause that it must be paid up in the event of divorce especially since the Shariah does not give women the right to maintenance after divorce.

VII. Choice and Importance of Consent doctrine

Most women do not have a real choice, forced by poverty or social conditions, they accept marriage as a pre-fixed pattern of their lives. In this, we find that the situation of most communities vis-a-vis socio-economic class. But otherwise patriarchy extends its holds over Muslim Personal laws in the same way, corrupting that could have been a potentially liberating and empowering concept,

CHOICE AND ITS IMPACT DURING MARRIAGE NEGOTIATIONS

TABLE 7.1

KNOWLEDGE ABOUT MEANING OF CHOICE

ITEM NO	CHOICE CONTENTS	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	94	94	49	98	80	80	89	89	129	86
2	NO	4	4	0	0	9	9	11	11	21	14
3	No Comments	2	2	1	2	11	11	0	0	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100

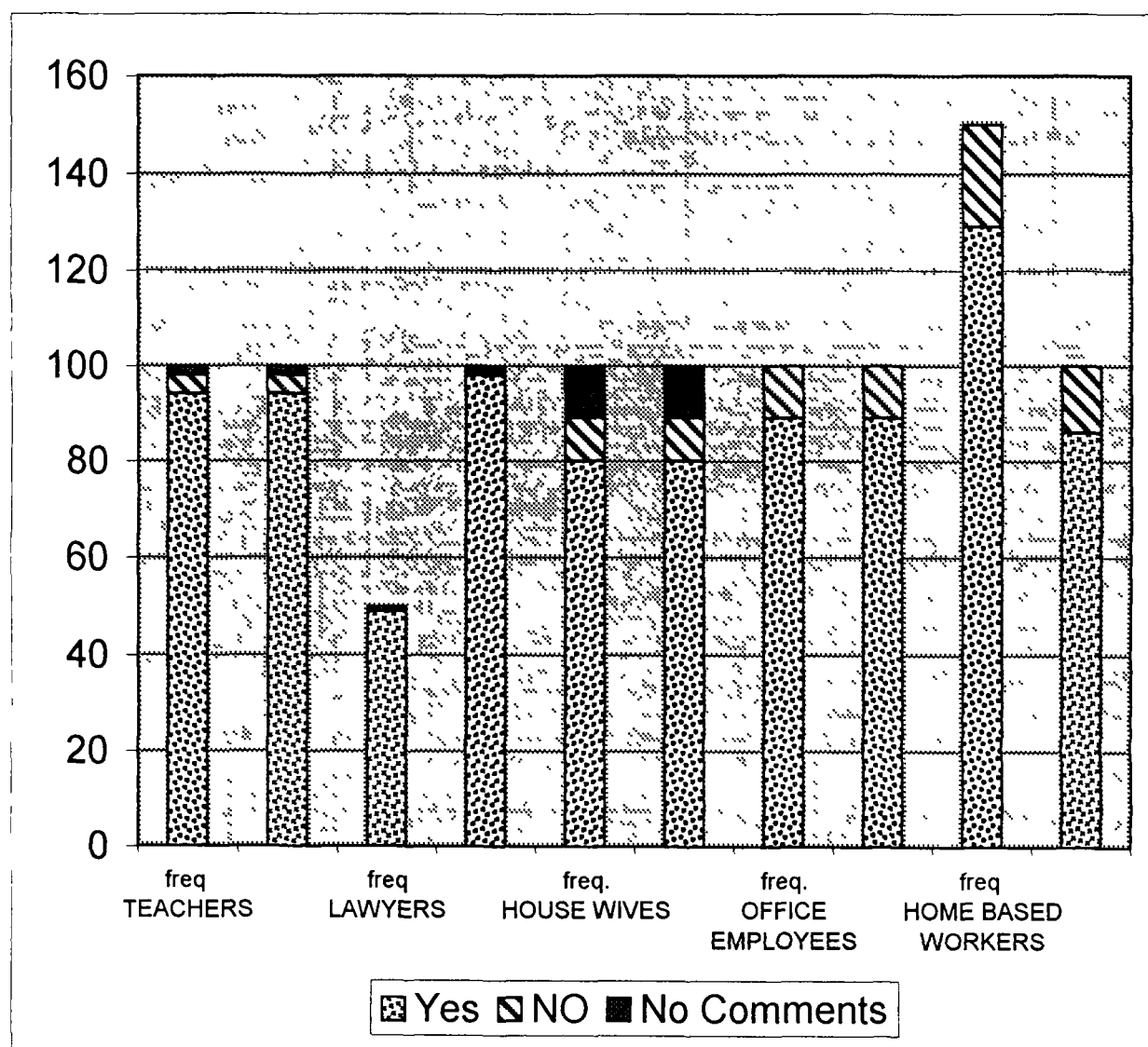
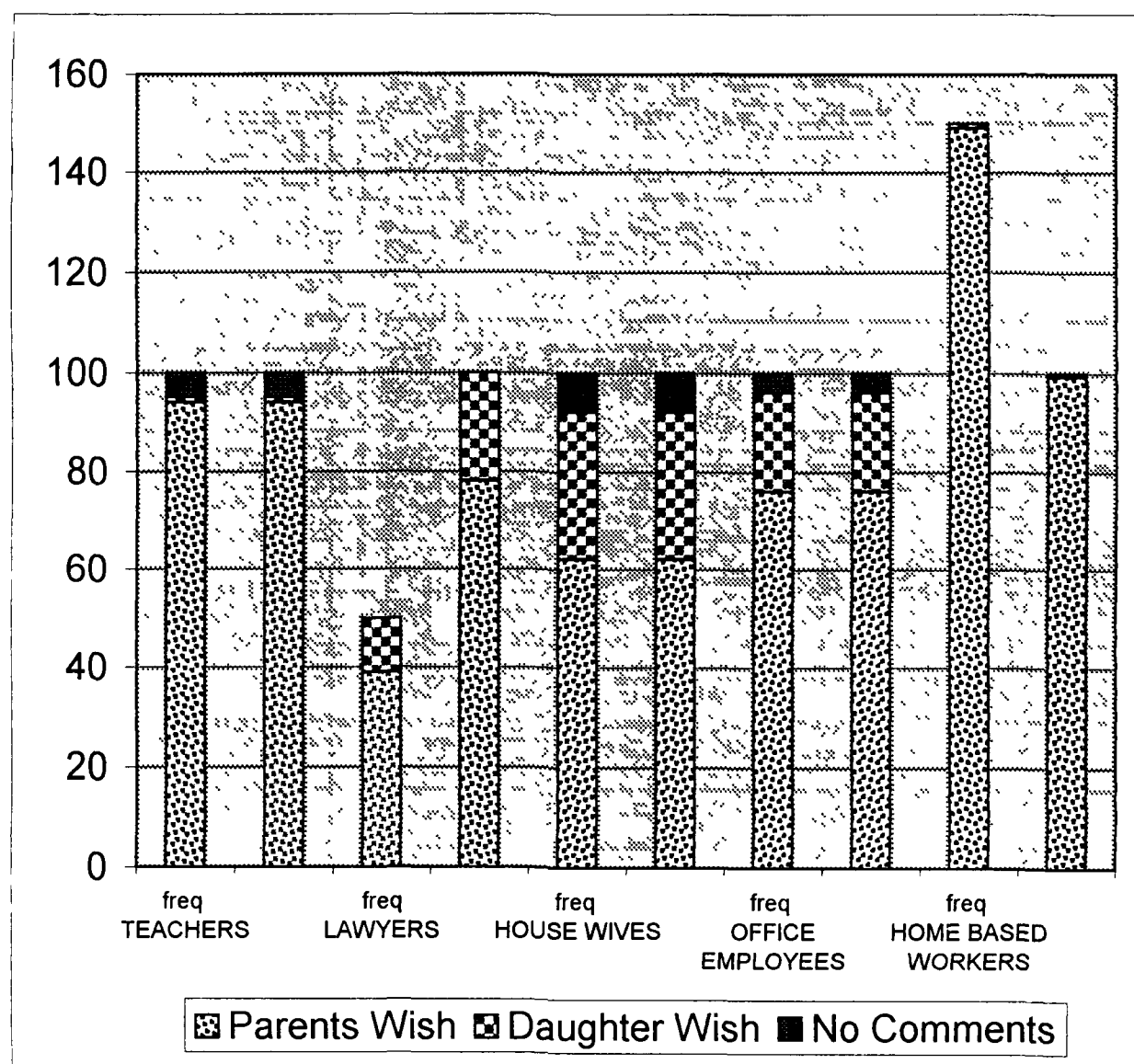


TABLE 7 2

MARRIAGE IN ACCORDANCE WITH THEIR PARENTS CHOICE

ITEM NO	MARRIAGE BY PARENT WISH	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Parents Wish	94	94	39	78	62	62	76	76	149	99 33
2	Daughter Wish	1	1	11	22	30	30	20	20	1	0 67
3	No Comments	5	5	0	0	8	8	4	4	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



especially for women. But women generally for the sake of parents respect waive their right to choice. Consent of the girl is in general never really operationalised in the manner in which Muslim Personal law or shariah seeks.

Table 7.1, counts the responses of all the responses of choice during marriage negotiations. In teachers class replies of yes as 94% and replies of no as 4%. In case of lawyers class response of yes is 98% and responses of no are surprising 0%. In case of office employees the responses of yes counts as 89% and responses of no counts as 11%. In case of last two categories of housewives and home based workers the responses of yes count as 80% and 86% and in case of no counts as 9% and 14%.

Table 7.2, talks about responses in marriage when solemnised in accordance with their parents choice. The teachers class preferential choice is their parents choice counts as 94% and only 1% of them they go for marriage in accordance with their own choice. Similarly, in lawyers class they go for marriage in accordance with their parents wish counts as 78% and those go in accordance with their own choice counts as 22%. In office employees class same trend followed those go for marriage in accordance with parents counts as 76% and those give importance to their own choice counts as 20%. In housewives and home based workers classes frequencies of parents wishes are as 62% and 93.3%. And frequency about their own choice counts as 30% and 0.6%.

TABLE 7.3

AWARENESS ABOUT RIGHT TO CHOICE UNDER ISLAM

ITEM NO	RIGHT TO CHOICE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Aware	82	82	49	98	51	51	78	78	41	27 33
2	Not Aware	6	6	0	0	33	33	12	12	102	68
3	No Comments	12	12	1	2	16	16	10	10	7	4.67
	TOTAL	100	100	50	100	100	100	100	100	150	100

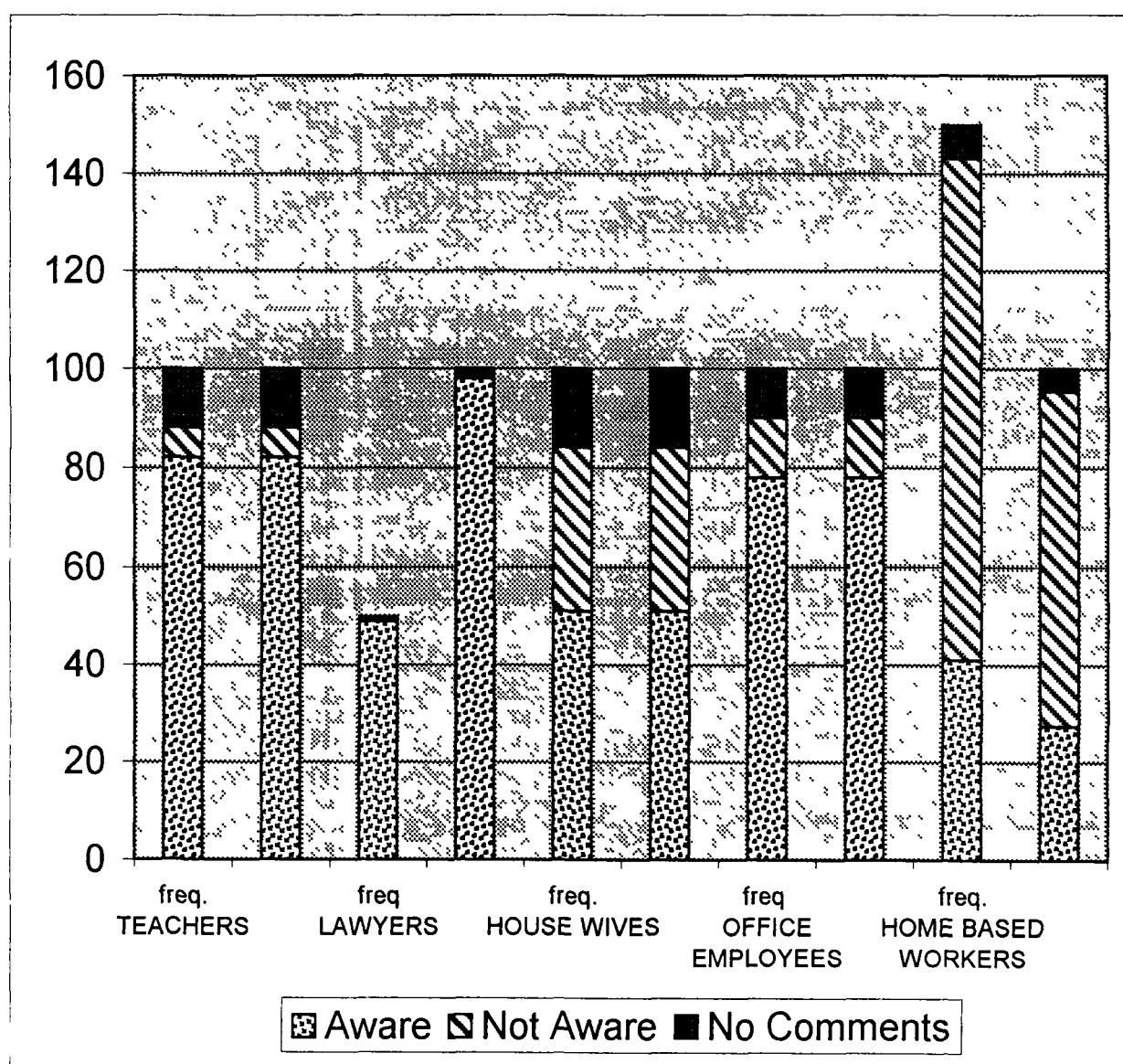
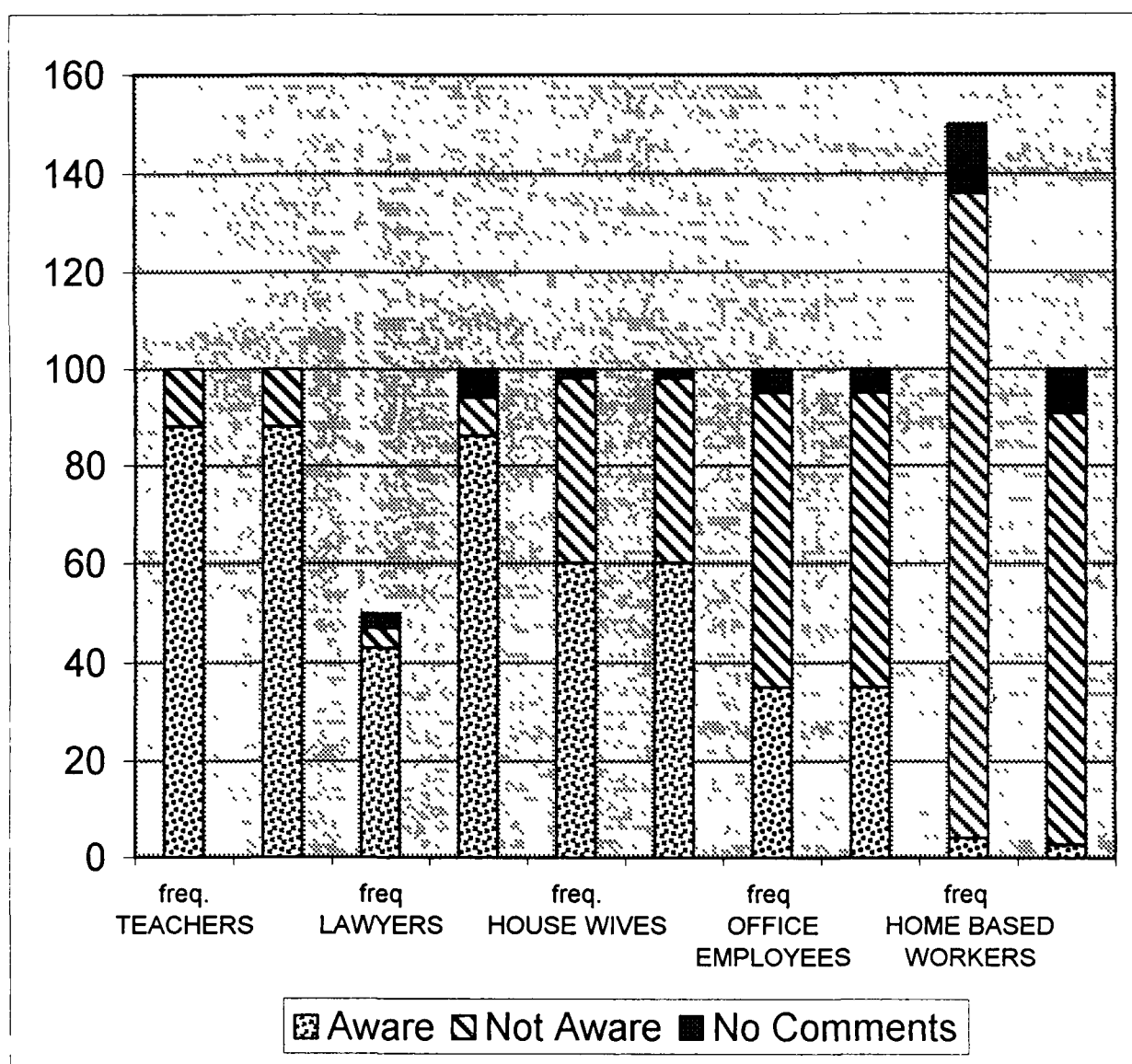


TABLE 7.4

AWARENESS OF QURANIC PROVISION REGARDING MARRIAGE CONTRACT

ITEM NO	AWARENESS	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq	%age	freq	%age	freq.	%age	freq	%age	freq	%age
1	Aware	88	88	43	86	60	60	35	35	4	2.67
2	Not Aware	12	12	4	8	38	38	60	60	132	88
3	No Comments	0	0	3	6	2	2	5	5	14	9.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



The table 7.3, talks about the awareness of right to choice under Islam among all the respondents. In first category i.e., teachers responses of awareness counts as 82% and responses of no counts as 6%. In lawyers category responses of awareness counts as 98% and nil responses under not awareness. In office employees class responses of awareness shows as 78% and responses of no shows as 12%. In cases of housewives and home based workers categories the responses of awareness counts as 51% and 27.3%. And in cases of non awareness sections shows as 33% and 68% respectively.

The frequencies under table 7.4, indicates about the awareness of Quranic provisions regarding marriage contract. In teachers class responses of awareness numbered as 88% and responses of non awareness numbered as 12%. In lawyers class responses of awareness shows as 86% and responses of no shows as 8%. In office employees class responses of awareness comes as 35% and responses of non awareness comes as 60%. In last two classes i.e.. housewives and home-based workers responses of awareness indicates as 60% and 2.6%. And responses of non awareness indicates as 38% and 88% inter alia.

Table 7.5, indicates the responses about when the conflict between parents choice and girl choice case, which one is prevail. In teachers class responses of parent's choice counts as 92% and responses of girl's choice counts as 8%. In case of lawyers class the

TABLE 7.5

CONFLICT BETWEEN PARENTS CHOICE AND DAUGHTER CHOICE

ITEM NO	MODE OF CHOICE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Parents Choice	92	92	29	58	60	60	87	87	142	94.67
2	Girl's Choice	8	8	17	34	32	32	11	11	2	1.33
3	No Comments	0	0	4	8	8	8	2	2	6	4
	TOTAL	100	100	50	100	100	100	100	100	150	100

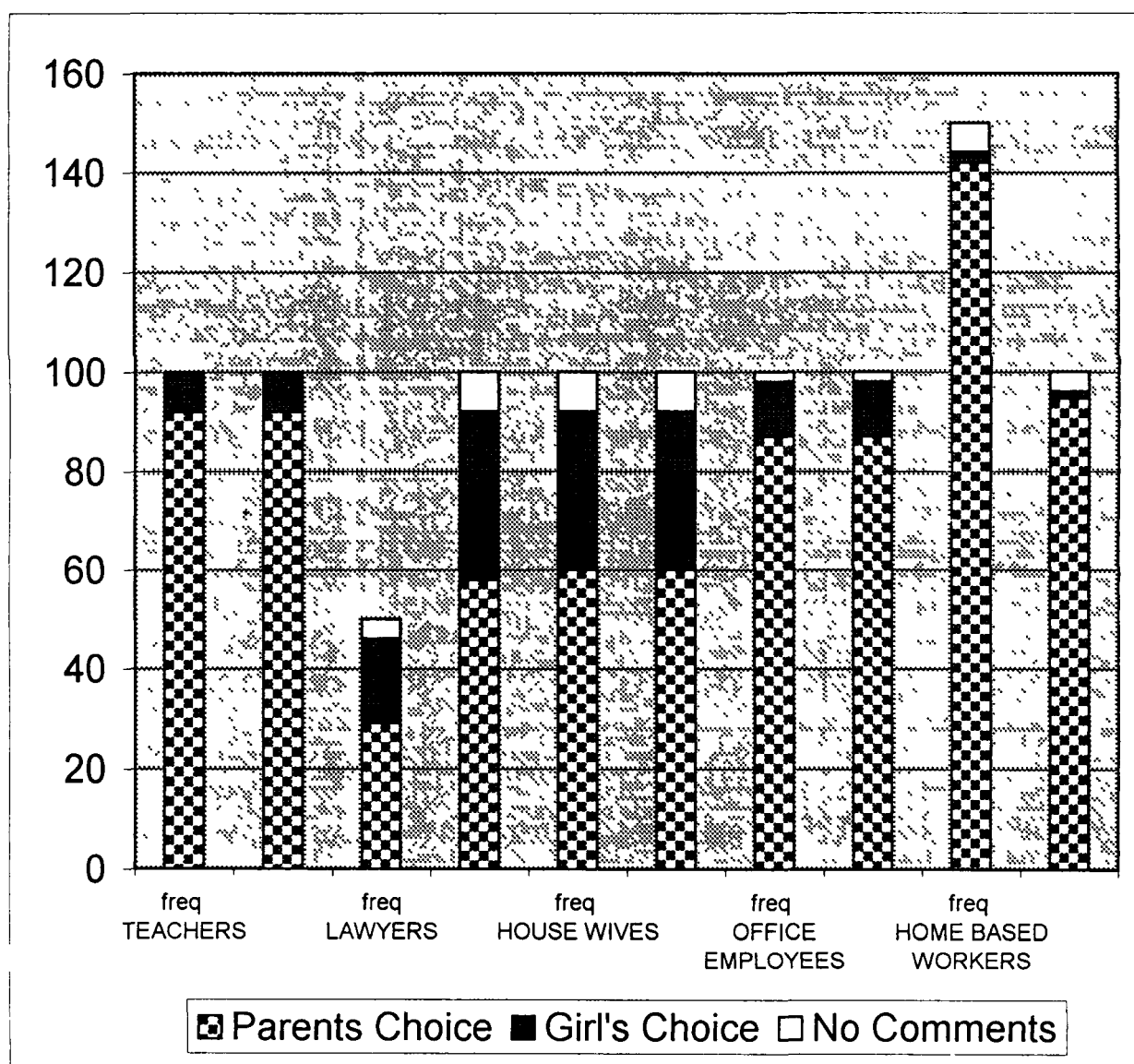
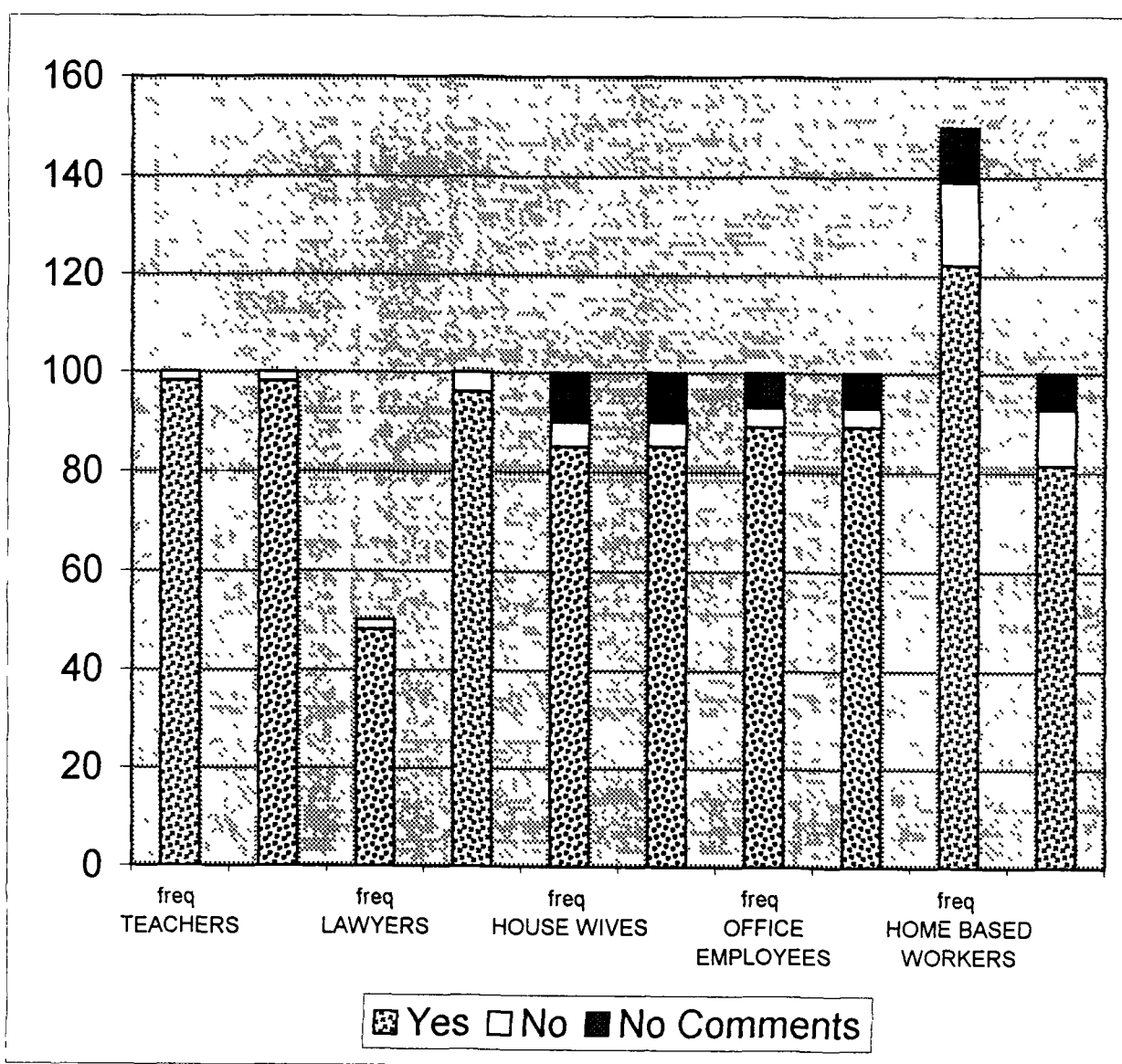


TABLE 7.6

PARENTS SOUGHT CONSENT AT THE TIME OF NIKAH

ITEM NO	CONSENT AT NIKAH	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	98	98	48	96	85	85	89	89	122	81.33
2	No	2	2	2	4	5	5	4	4	17	11.34
3	No Comments	0	0	0	0	10	10	7	7	11	7.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



responses of parents choice comes as 58% and responses of girl choice comes as 34%. In office employees class 87% responses goes in favour of parents choice and 11% goes in favour of girl's choice. Rest two classes i.e. housewives and home based workers shows these responses in favour of parents choice as 60% and 94.6% and these are the responses in favour of girl's choice as 32% and 1.3%. The responses those go in favours of girl's choice are very scanty effect or insignificant in two categories namely, office employees and home based workers.

The table 7.6, gives the detail about whether parents sought consent at the time of nikah ? In teachers class responses of where consent of the girl taken by her parents indicates as 98% and in case of no indicates 2%. In Lawyers class responses of yes counts as 96% and responses of no counts as 4%. Under office employees class responses of yes count as 89% and for no counts as 4% and other two categories viz. housewives and home based workers for yes counts as 85% and 81.3% and for no shows as 5% and 11.3%.

Discussion

None of the respondents of all the categories could voice their opinion about their own marriage nor was it expected for them do so. Even today for a girl to listen about anything concerning her own marriage considered bad. A girl was expected to shy and coy. Besides, the elder members of the family give no thought to choice

of the person who was to be married. In very few cases one finds that the choice of the girl is given some considerations. In total sample the girl choice was taken into consideration in a insignificant way. She has to submit her wishes against her parents wishes. These responses in above mentioned able proves our hypotheses that even in this educated era parents will not pay any heed towards their children's choice.

Once again we prove our hypotheses and say from above frequencies it should not be deduced that these parents left the selection of match entirely on the discretion of their daughters instead, we find that the girls choice is sought only after the family elders have approved it and finalized every thing. This is mainly a kind of formality which the parents undergo knowing very well that they would get the answer in affirmative. Moreover, this is established fact which comes under same sections of our society, that since the girl's are brought up in a very restricted social environment with extremely limited social relations with people outside the family circle, even if given chance, they find themselves incapable of selecting the suitable match and show more reliance on the judgement of their elders.

Discussion :

Consent is said to be an important pillar of Marriage Institution. It is just not a matter of saying yes or no; other nuances cannot be negated, particularly since women are normally brought

up to respect and obey authority, to be submissive and given assent to the wishes of their parents or elders. Even, if she were to use this opportunity to express her dissent, it is likely that it is smothered, overlooked, or simply brushed a side as unimportant. For example, if a woman gives a positive answers with a sob, with some hesitation, with a catch in her voice, it is likely to be taken as the normal reaction of a woman who leaving her parents.

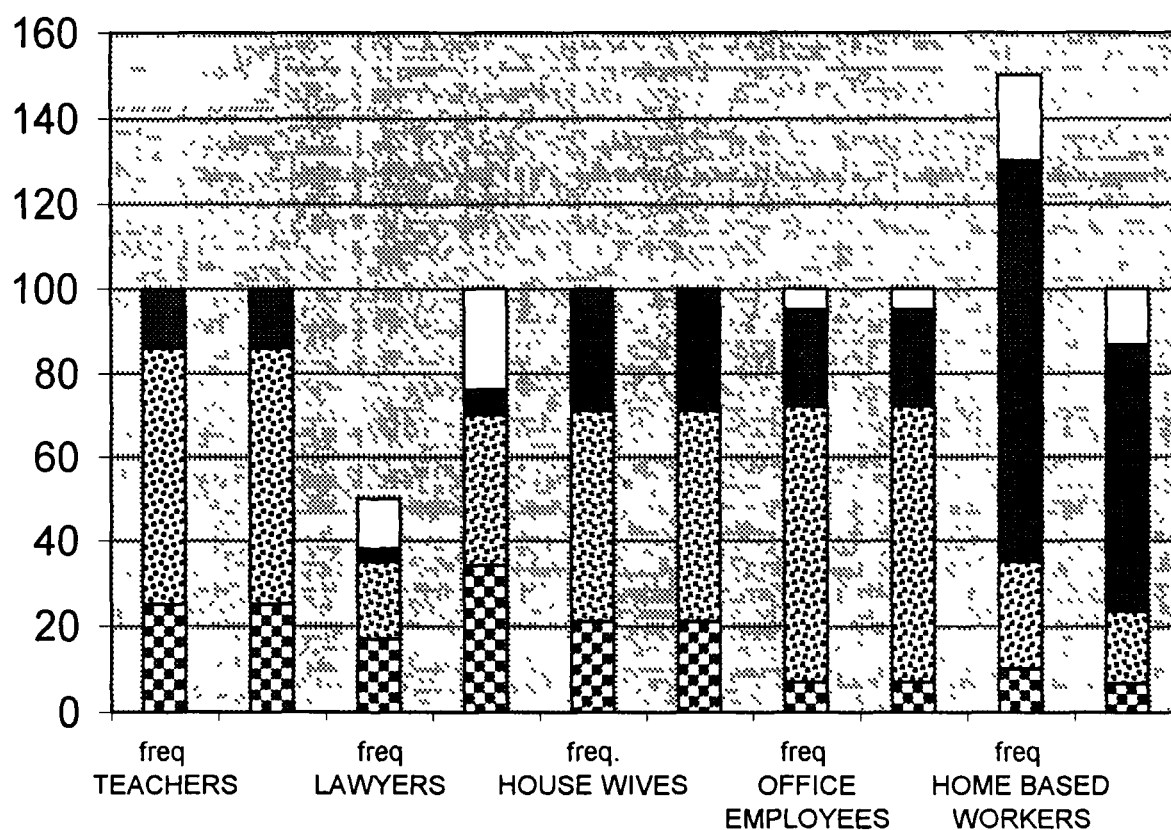
Islam considers marriage a social contract between two consenting adults. Muslim Personal law deemed it to be a contract that any man or woman may enter into it after puberty for the object of procreation and legalizing of children with sound mind.

In Muslim families parents normally looked for a boy and once a suitable proposal came by, they would marry the girl off. By these days in some cases the livelihood of parents consulting the girl about her desire to get married has increased. However, a girl who knows that she will have to, in any case, be married to a boy of per parents choice, usually agrees, even she has her own choice and lastly she has been socially conditioned into accepting a marriage of this kind. Incidences of boys and girls marrying persons of their own choice have increased, but the norm still remains the parents choice, as it is assumed that parents know best for their child, and that it is their responsibility to find a proper match for their children. Consent doctrine also prove our hypotheses as we know Quran and Sunnah provides right to choice and consent is

TABLE 7.7

IMPORTANCE OF THE CONSENT OF GIRL DURING MARRIAGE NEGOTIATION

ITEM NO	CONSENT POSITION	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Consented Before	25	25	17	34	21	21	7	7	10	6.67
2	Consented After	61	61	18	36	50	50	65	65	25	16.67
3	Not consented	14	14	3	6	29	29	23	23	95	63.33
4	Miscellaneous	0	0	12	24	0	0	5	5	20	13.33
TOTAL		100	100	50	100	100	100	100	100	150	100



□ Miscellaneous
 ■ Not consented
 ▨ Consented After
 ▩ Consented Before

recognised as an essential requisite for a valid marriage but in practice parents always keep this right in their own hands.

Sometimes consent itself is clothed in ambiguity, in addition to the fact that male perceptions and evaluation of women's behaviour and emotions are likely to be oriented in a manner that is at variance with women's experiences and expressions. From the above table we inferred that parents sought consent at the time of nikah but not before fixing of her marriage.

In reference to table 7.7 which attributed the importance of the consent of girl during marriage negotiations. In teachers class frequency about taking consent before marriage represent as 25%, consent after marriage represent 61% and cases of consent not sought at any instance represent 14%. Lawyers category reports about when consent taking before marriage as 34%, when consent reported after fixing of marriage proposal as 36% and in 6% cases when not consented any stage. In office employees class the frequency of consent before fixing of marriage counts as 7%, the rates are very high frequency, where consent sought after fixing of the marriage as 65% and responses when consent not sought in any form counts as 23%. In last two categories namely, housewives and home based workers the frequencies of consented before marriage as 21% and 6.6%. The cases of consent after fixing of proposal counts as 50% and 16.6%. In case of not consented types, frequencies are as follows 29% and 63.3%.

TABLE 7 8

CONSENT OF GIRL AND ITS IMPLICATION

ITEM NO	WOMEN CONSENT	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	99	99	47	94	80	80	75	75	7	4.67
2	No	0	0	2	4	19	19	19	19	139	92.67
3	Miscellaneous	1	1	1	2	1	1	6	6	4	2.66
	TOTAL	100	100	50	100	100	100	100	100	150	100

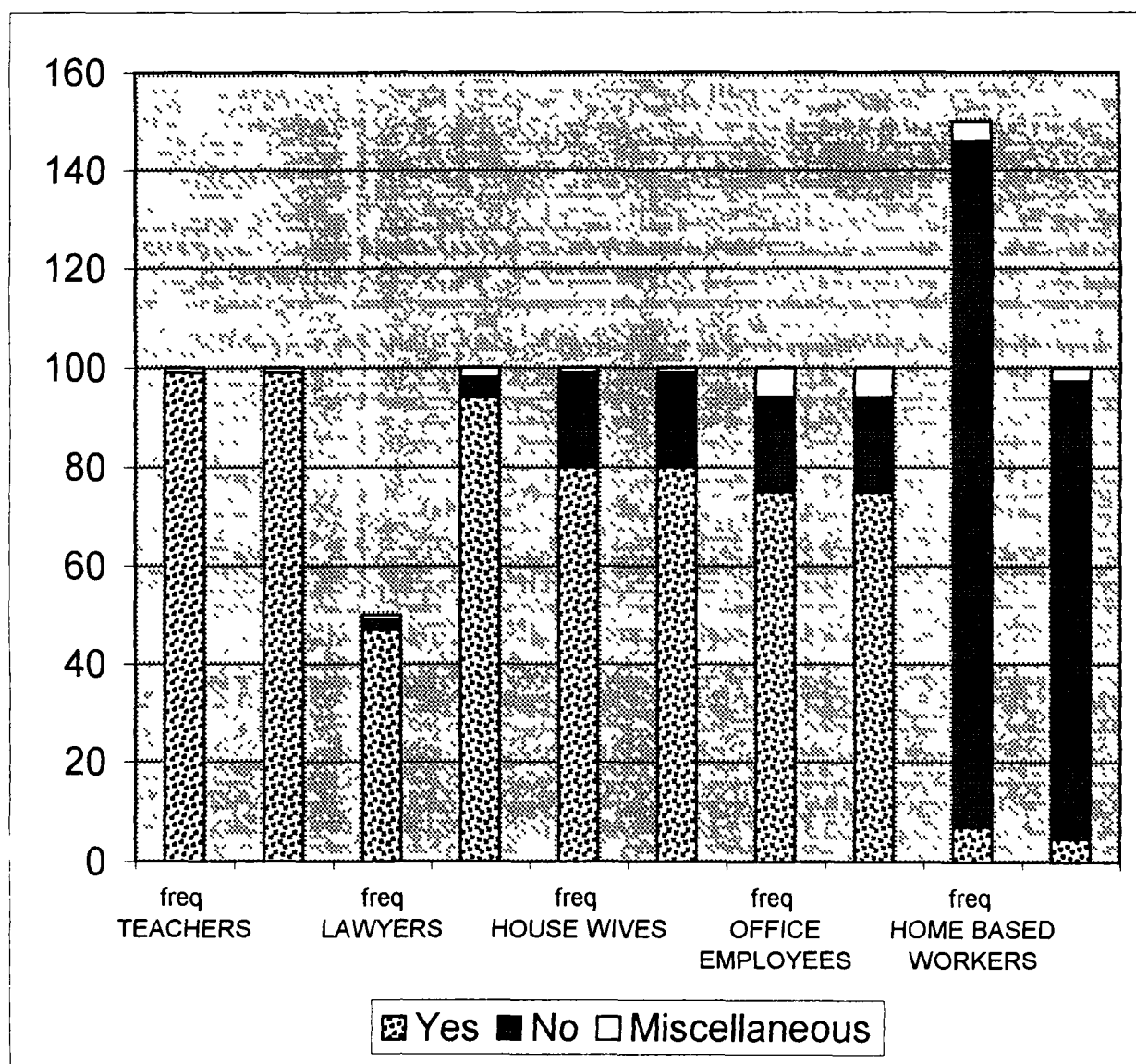


TABLE 7.9

ACCEPTED MODE OF CONSENT - UNDER ISLAM

ITEM NO	MODE OF CONSENT	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Explicitly Yes	84	84	45	90	86	86	79	79	44	29.33
2	Your Silence	8	8	0	0	7	7	12	12	40	26.67
3	Nodding Head	8	8	3	6	6	6	7	7	63	42
4	Miscellaneous	0	0	2	4	1	1	2	2	3	2
TOTAL		100	100	50	100	100	100	100	100	150	100

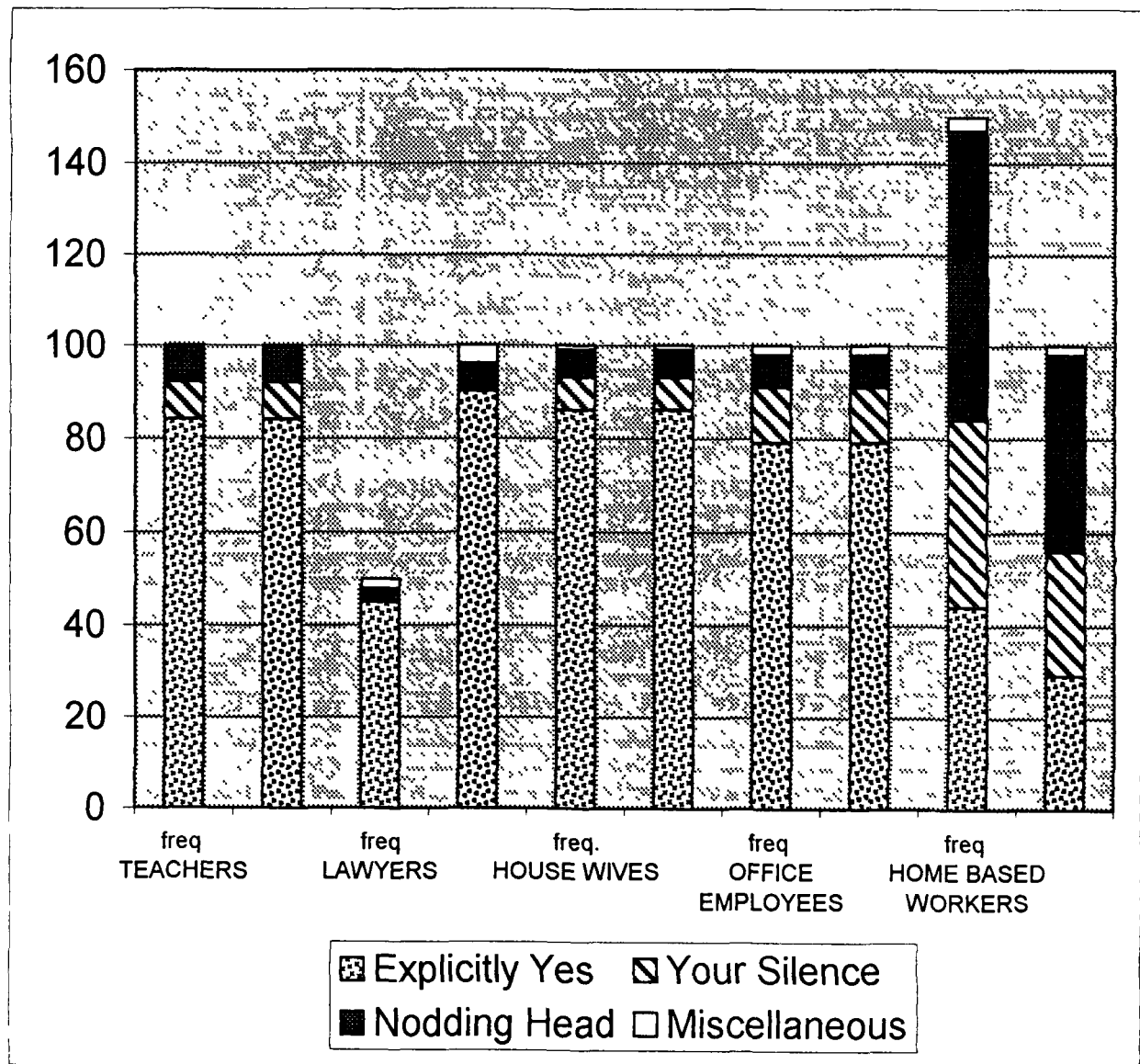


Table 7.8, indicates the importance of consent of the girl and its implication under marriage contract negotiations. In teachers class the frequency of yes is as 99% and surprising 0% frequency of not responding class. In case of lawyers class frequency of yes as 94% and frequency of no as 4%. In office employees class the frequency of yes counts as 75% and the frequency of no counts as 19%. In housewives category it counts in form of yes as 80% and in form of no as 19%. In last class i.e. home based workers it costs yes as 4.6% and costs no as 92.6% respectively.

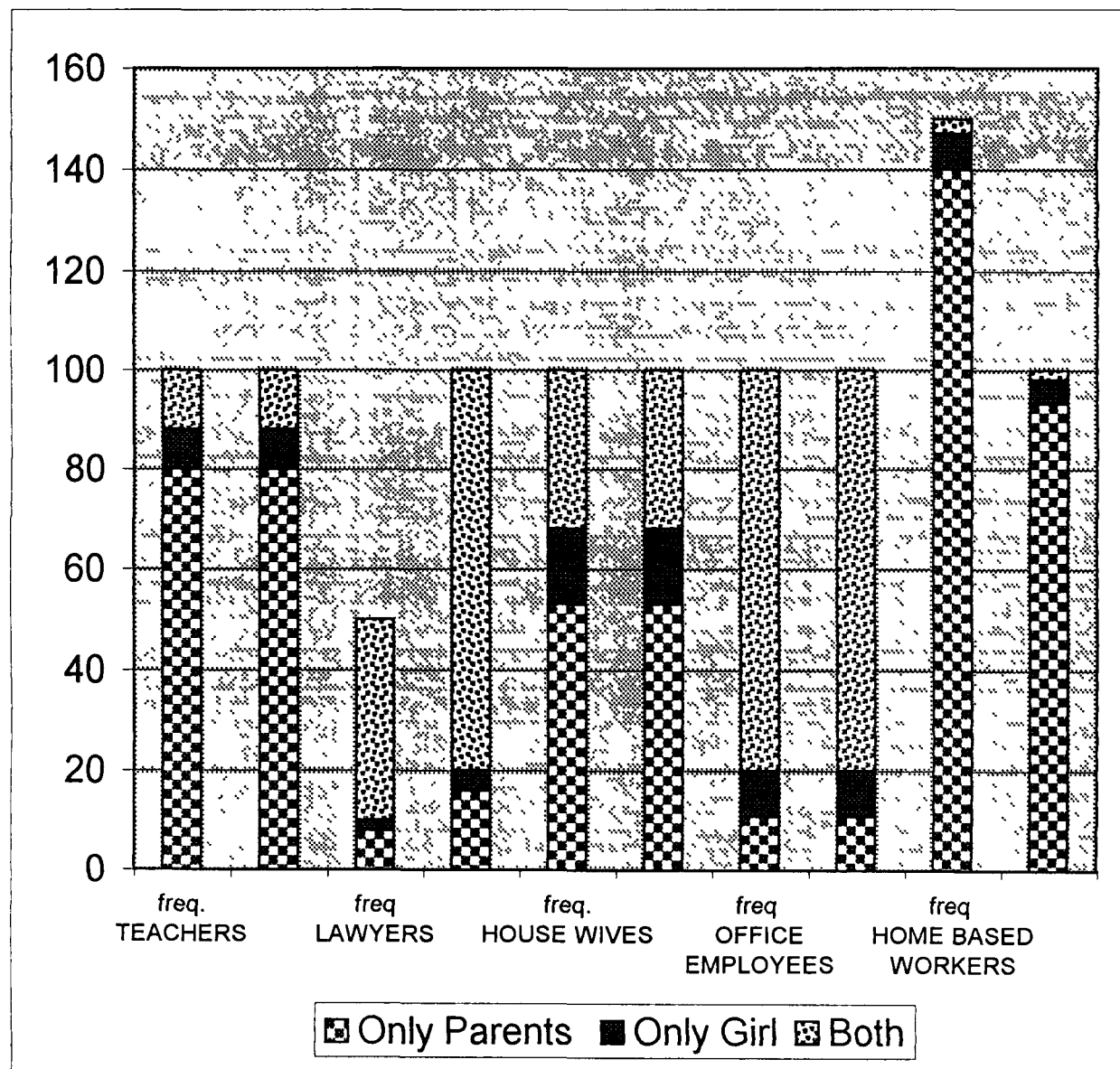
The table 7.9, about the responses of accepted popular mode of consent given by Islam and which mode is most popular among all the respondents. In teachers section the most accepted mode is explicitly yes shows as 84% and silence and nodding head as 8%. In lawyers section the most accepted mode is as same in the teachers class i.e. explicitly yes, shows as 90% and no as 8%. In office employees class again this mode is popular mode counts as 79% and silence and nodding head counts as 12% and 7% primarily. In last two sections i.e., housewives and home based workers situation same and their also most accepted is explicitly yes which counts as 86% and 29.3%. Second accepted mode is silence modes counts as 7% and 26.6%. Lastly nodding head is last mode which counts as 6% and 42%.

The table 7.10, examine the importance of consent of both parents as well as daughters in marriage contract. Under teachers

TABLE 7.10

IMPORTANCE OF CONSENT OF BOTH UNDER MARRIAGE CONTRACT

ITEM NO	CONSENT OF BOTH	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Only Parents	80	80	8	16	53	53	11	11	140	93.33
2	Only Girl	8	8	2	4	15	15	9	9	7	4.67
3	Both	12	12	40	80	32	32	80	80	3	2
TOTAL		100	100	50	100	100	100	100	100	150	100



class those are accepted only parents consent is important counts as 80% and those are said only girl's consent is important counts 8% and those says consent of both are necessary counts are as 12%. In lawyers class those affirms only parents consent counts as 16%, those says only girl's consent 4% and those says consent of both are necessary counts 80%. In case of office employees the responses in the favour of only parents counts as 11%, in favour of girl's only counts as 9% and large number of frequency those affirms consent of both are necessary counts as 80%. In housewives class those affirm only parents consent counts as 53%, frequency about girl's content counts as 15% and high rate those affirm consent of both are necessary counts as 32%. In last class i.e. home based worker, those affirm only parents consent counts as 93.3% and in the rest two classes very meagre frequencies lies. Thus in this table, we can interpret that the last category affirm in majority their parents consent in marriage negotiations though they have their own choice, in comparison with rest of all the categories.

VIII. Role of Muslim Personal Law and Indian Judiciary

This part examines the efficiency, role of Muslim Personal law and attitude of judiciary towards marriage. There is general notion that education increases women's awareness and thereby enhance their aspiration towards change and reforms. This part further attempts and comment on whether education leads to increasing Muslim women's awareness of their legal status and

VIEWS ABOUT APPLICATION OF ROLE OF THE MPL* AND INDIAN JUDICIARY
TABLE 8.1

ROLE OF MUSLIM PERSONAL LAW AND INDIAN JUDICIARY

ITEM NO	MPL* & INDIAN JUDICIARY	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Applied Correctly	29	29	20	40	40	40	19	19	41	27.33
2	Not Applied Correctly	70	70	30	60	51	51	42	42	109	72.67
3	Miscellaneous	1	1	0	0	9	9	39	39	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100

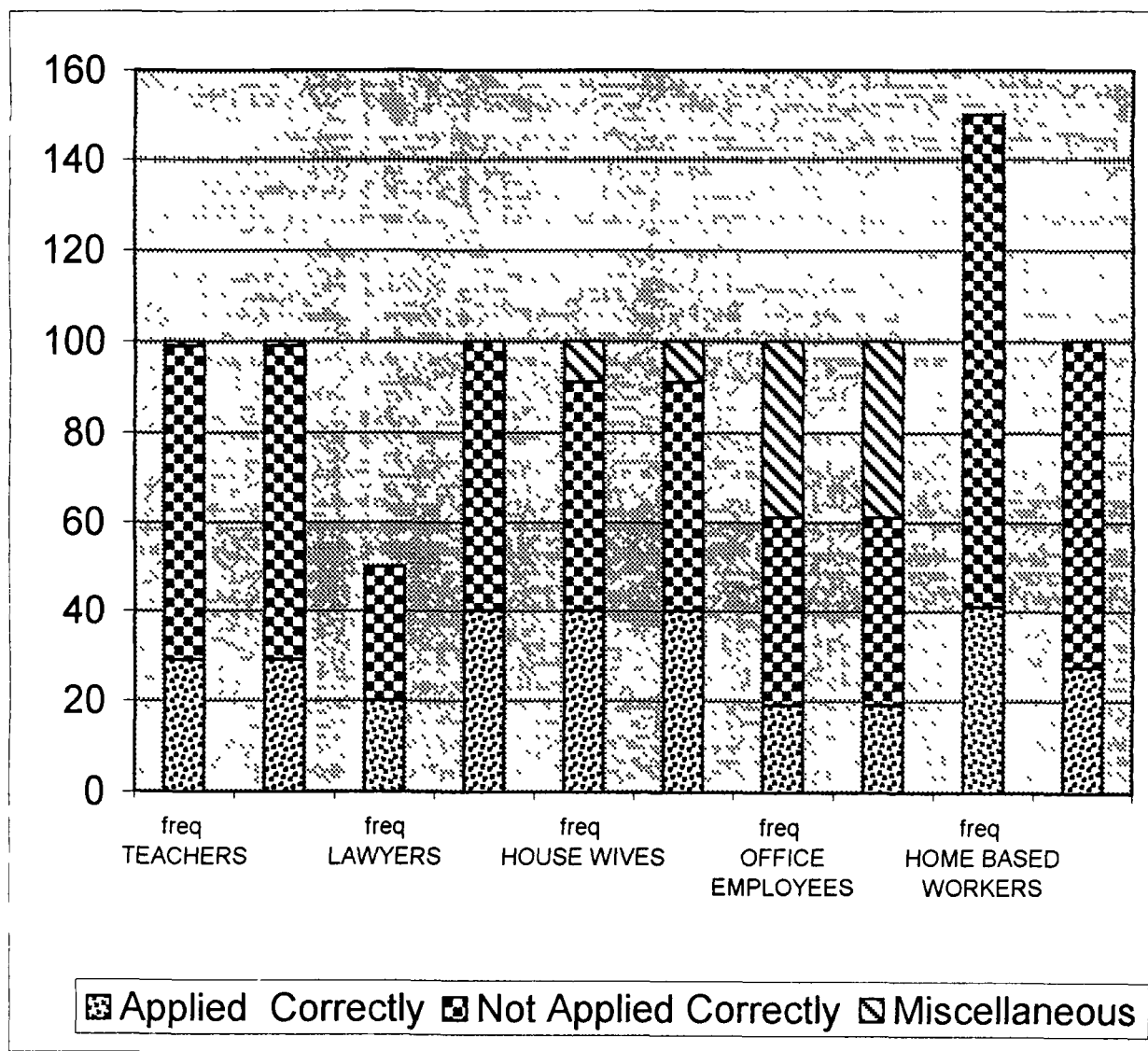
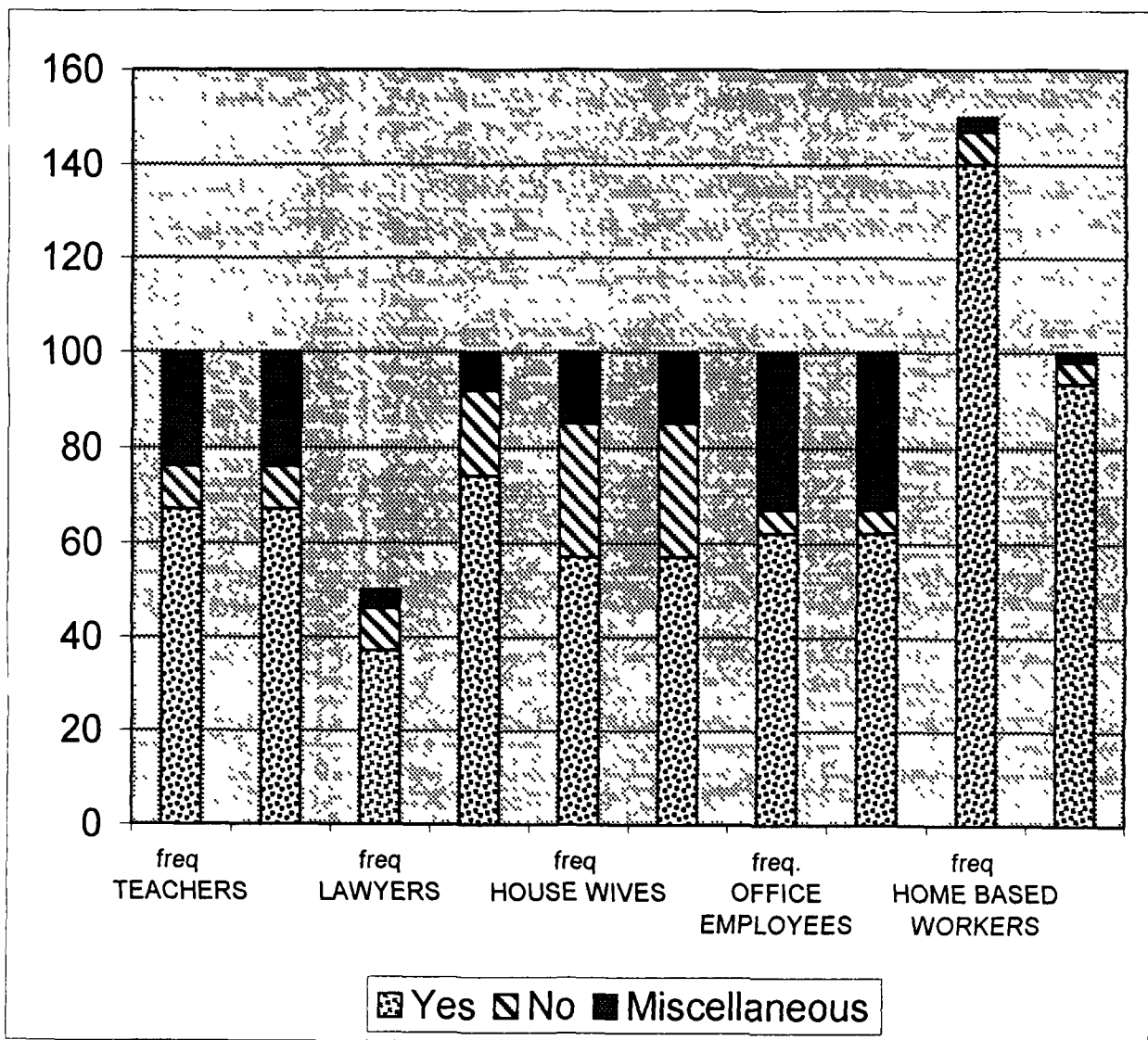


TABLE 8.2

MUSLIM OBSERVE NOT ONLY MPL* BUT ALSO THEIR TRADITIONAL AND CUSTOMARY LAW

ITEM NO	ACCEPTANCE TYPE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	67	67	37	74	57	57	62	62	140	93 33
2	No	9	9	9	18	28	28	5	5	7	4 67
3	Miscellaneous	24	24	4	8	15	15	33	33	3	2
	TOTAL	100	100	50	100	100	100	100	100	150	100



rights in Muslim Personal law and lastly leads them to articulate the aspirations for changes in it.

The table 8.1 intended to see the role of Muslim Personal law as well as Indian judiciary. In teachers category those responses that both are applied correctly represents as 29% and those says both are not applied correctly represents as 70%. In lawyers category, those respondent towards that they both applied correctly represents as 40% and those accept not applied correctly represent as 60%. In office employees class represents the frequency those says as applied correctly in disputes counts as 19% and those says not applied correctly in disputes counts as 42%. In this category there are high percentage of those respondents those are not commenting for it. In housewives the trend establish for the response applied correctly counts as 40% and for the responses not applied correctly counts as 51%. In the last class, those says yes for the response applied correctly counts as 27.3% and those says no for the response not applied correctly counts as 72.6%.

Table 8.2, evaluate the condition when Muslim observe not only Muslim Personal law but also their traditional and customary laws. In teachers categories responses for yes find as 67% and responses for no find as 9%. In lawyers class responses for yes counts as 74% and for no counts as 18%. In office employees class answer for yes counts as 62% and answers for no counts as 5%. In the housewives and home based workers classes answers for yes

TABLE 8.3

TENSION BETWEEN MPL* AND PROCEDURAL LAW

ITEM NO	TENSION BETWEEN BOTH	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	MPL* Prevails	78	78	33	66	86	86	67	67	129	86
2	Procedural Law Prevails	6	6	9	18	12	12	4	4	7	4.67
3	Miscellaneous	16	16	8	16	2	2	29	29	14	9.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

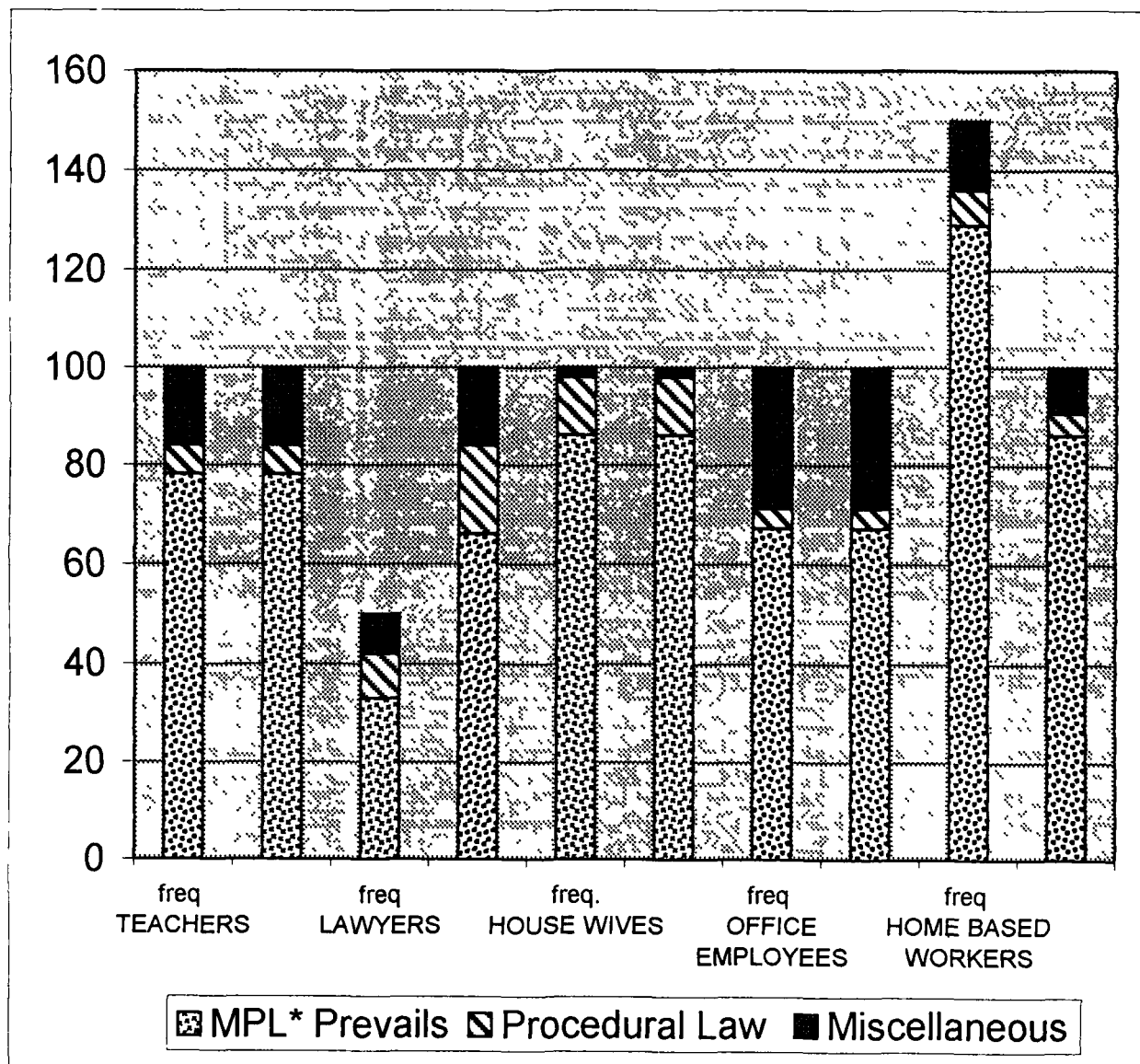
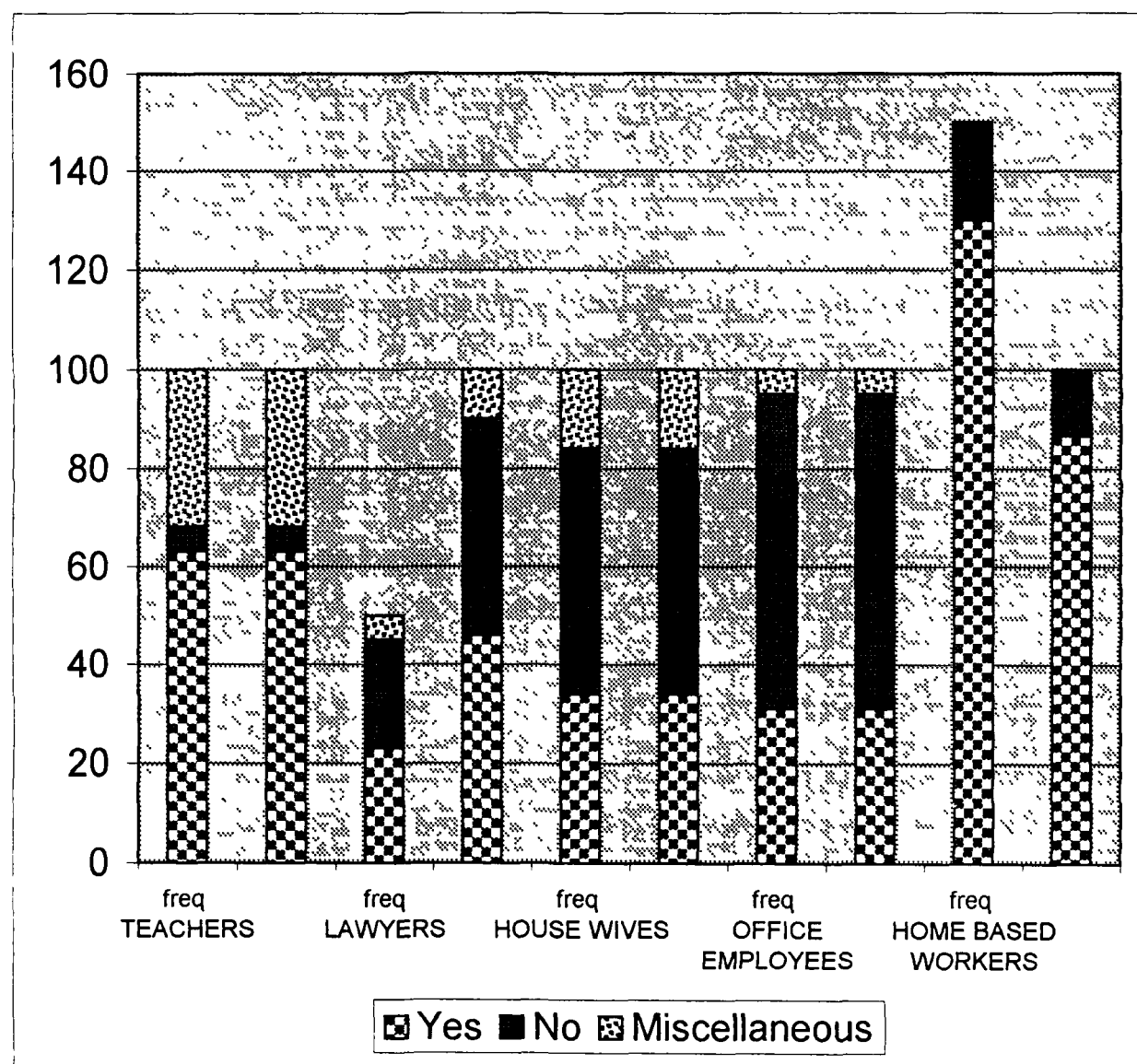


TABLE 8.4

EXISTENCE OF LOOPHOLES IN MUSLIM PERSONAL LAW

ITEM NO	LOOPHOLES IN MPL*	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	63	63	23	46	34	34	31	31	130	86 67
2	No	5	5	22	44	50	50	64	64	20	13 33
3	Miscellaneous	32	32	5	10	16	16	5	5	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



indicate as 57% and 93.3%. And answer for no indicates as 28% and 4.6% respectively.

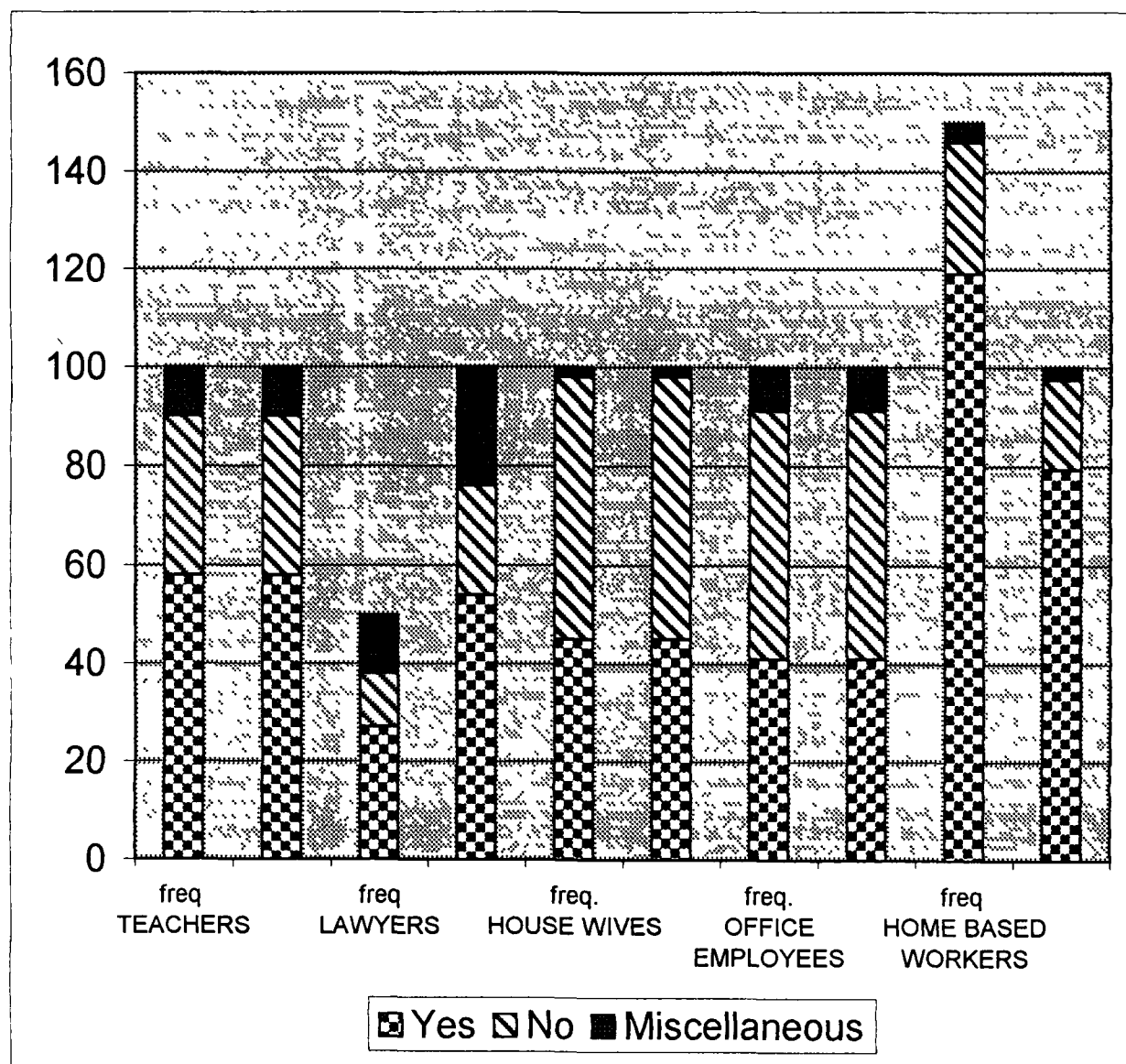
Under the table 8.3, the assessment of the attitudes of the respondents about when there is differences between the Muslim Personal law and Procedural law. In teachers category responses of those they want Muslim Personal law will prevail rate as 78% and in favour of when procedural law prevail rate as 6%. In lawyers category responses in favour of Muslim Personal law counts as 66% and in favour of procedural law counts as 18%. The category of office employees shows following responses as in favour of Muslim Personal law counts as 67% and in favour of Procedural law counts as 4%. In housewives category, those are in favour of Muslim Personal law counts as 86% and those are in favour of Procedural law counts as 12%. In last category of home based workers, responses in favour of Muslim Personal law counts as 86% and in case of Procedural law counts as 4.6%.

The table 8.4, affirms the existence of loopholes in Muslim Personal law. In teachers category, frequency for yes form as 63% and frequency for no form as 5%. In lawyers, frequency for yes 46% and frequency for no 44%. In case of office employees, frequency for yes 31% and frequency for no 64%. In this category, the respondents are not ready to accept for the existence of loopholes under Muslim Personal law as well as in housewives category, respondents are not ready to accept for the existence of

TABLE 8 5

NEED FOR THE CHANGES UNDER MPL*

ITEM NO	MPL*- NEED CHANGE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	58	58	27	54	45	45	41	41	119	79 33
2	No	32	32	11	22	53	53	50	50	27	18
3	Miscellaneous	10	10	12	24	2	2	9	9	4	2.67
	TOTAL	100	100	50	100	100	100	100	100	150	100



loopholes under Muslim Personal law. As we have discussed earlier in the Aligarh district, impact of religious education as well formal education one high. Even formally educated women did not want to accept loopholes under Muslim Personal law., In home based workers category the frequency of yes counts as 86.6% and frequency of no counts as 13.3%.

The results are tabulated in the table 8.5 asserts the need for the changes under Muslim Personal law. In teachers category the responses for yes emerges as 58% and for no emerge as 32%. In category of lawyers, emerges as 54% for yes and 22% for no. In office employees category, the responses for yes counts as 41% and for no counts as 50%. In other two categories i.e. housewives and home based workers for yes counts as 45% and 79.3% and for no counts as 53% and 18%.

IX. General Views

The last part under this empirical analysis chapter under questionnaire schedule which has dedicated to general views for some relevant issues. As we see in the sphere of religion, the woman has to confront the prejudices against her, created by the various religious and legal scholars by interpret from time to time. On views of Muslim community against the wider setting of all other communities, we realise that the woman had survived through different social situation. The men were bestowed with authority and were classed as superior to the women. The male and female

GENERAL VIEWS FOR SOME OTHER IMPORTANT ISSUES

TABLE 9 1

FREEDOM FOR THE MOVEMENT IN THE CITY

ITEM NO	FREE TO MOVE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	90	90	35	70	54	54	71	71	140	93.33
2	No	10	10	9	18	34	34	19	19	7	4.67
3	Not Alone	0	0	6	12	12	12	10	10	3	2
	TOTAL	100	100	50	100	100	100	100	100	150	100

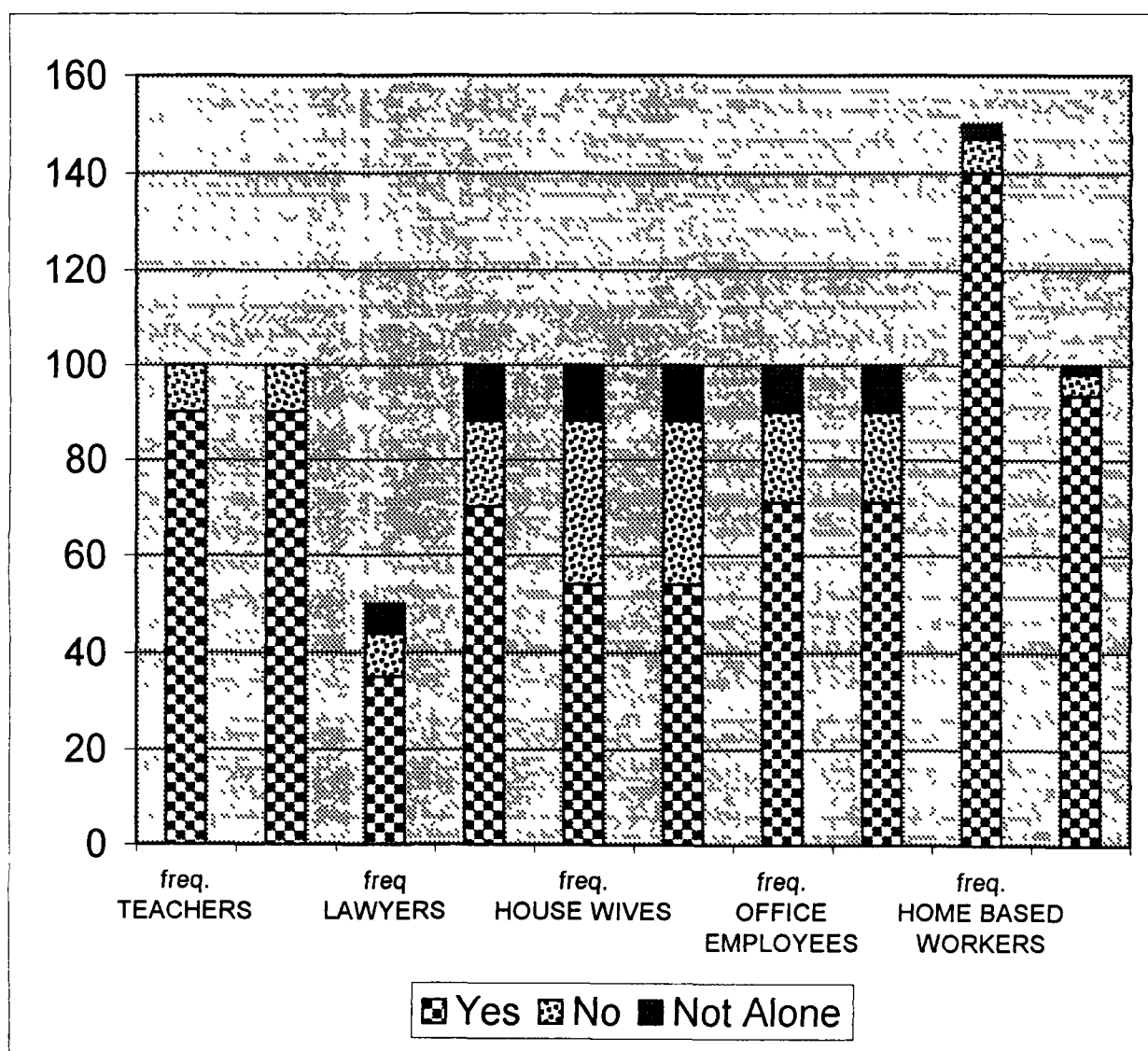
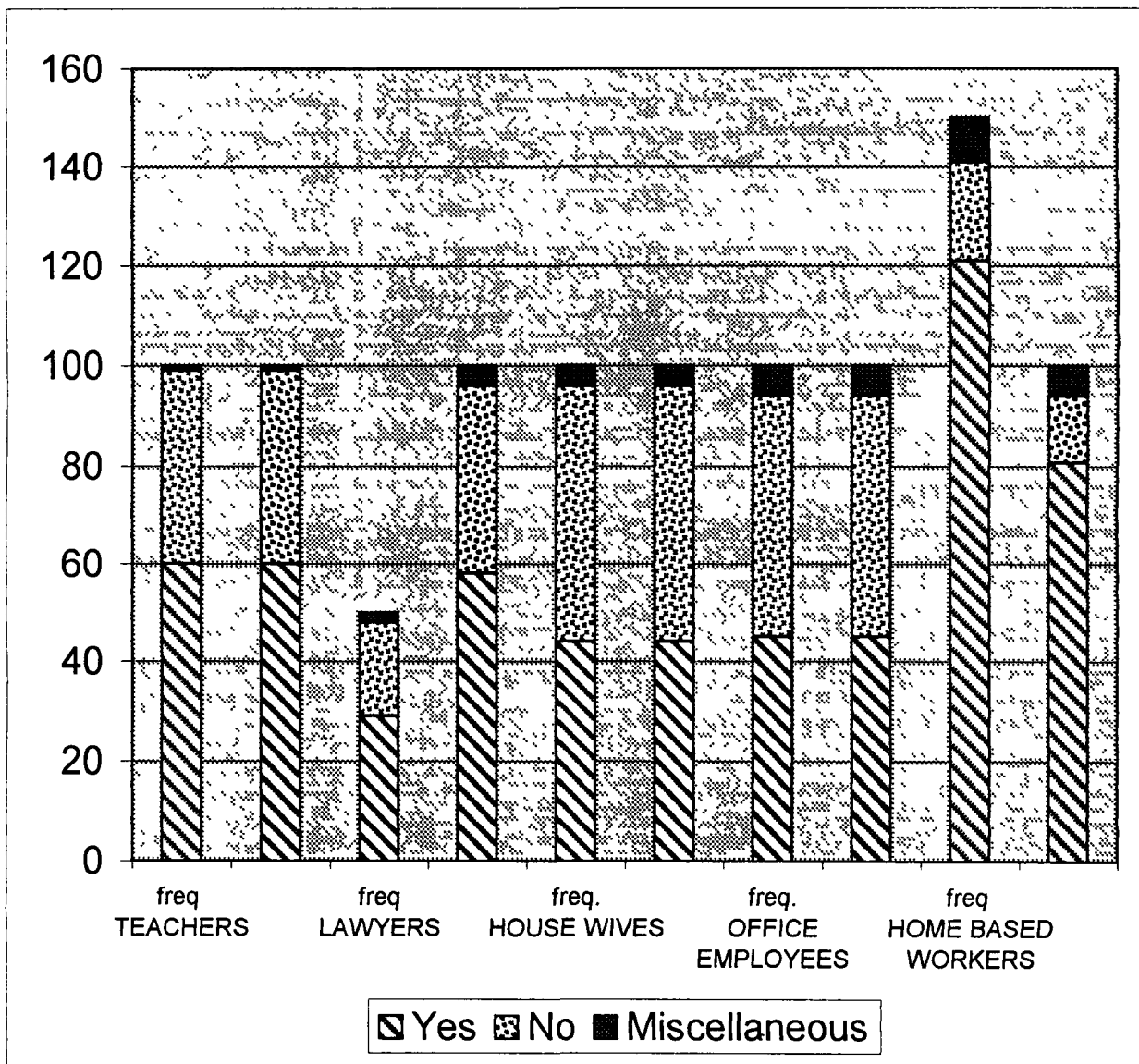


TABLE 9 2

IS MPL* DISCRIMINATORY TO WOMEN

ITEM NO	MPL* - DISCRIMINATORY	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	60	60	29	58	44	44	45	45	121	80.67
2	No	39	39	19	38	52	52	49	49	20	13.33
3	Miscellaneous	1	1	2	4	4	4	6	6	9	6
	TOTAL	100	100	50	100	100	100	100	100	150	100



activities were clearly marked out and there was no mixing of the roles.

Table 9.1, talks about the freedom for the movement in the city. Allah! says both the sexes are equal and also thus is need of the hour to emancipate women. She should have freedom of movement. But in some orthodox families women still not allowed to go alone. In this table under teachers category among all the respondents those are free to move counts 90% and 10% those are not free. In lawyers category, those are free to move counts as 90% and rest 10% those are not to free. In lawyers category, those are free to move counts as 70% and rest 30% not free to move. In office employees class the frequency about freedom of movement counts as 71% and frequency about no freedom counts as 29%. In office employees class yes form counts as 71% and no form counts as 29%. In those wives and home based workers categories freedom of movement those affirms count as 54% and 93.3%, and those negate this counts as 46% and 6.7%.

Table 9.2, disclose the position of whether Muslim Personal law discriminatory to women? In teachers category, reply of yes counts as 60% and reply of no counts as 40%. In lawyers category reply of yes counts as 58% and reply of no counts as 42%. In office employees category reply of yes counts as 45% and reply of no counts as 55%. In other two categories viz, housewife and home based workers, responses for yes counts as 44% and 80.6% and responses for no counts as 56% and 19.4%.

TABLE 9 3

MPL* IS DISCRIMINATORY TO WHICH ISSUES MOST

ITEM NO	ISSUES	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Talaq	33	33	23	46	42	42	37	37	105	70
2	Polygamy	0	0	0	0	24	24	0	0	10	6.67
3	Maintenance	20	20	12	24	14	14	23	23	20	13.33
4	Mahr	0	0	6	12	0	0	12	12	4	2.67
5	Above All	24	24	3	6	17	17	19	19	9	6
6	Miscellaneous	23	23	6	12	3	3	9	9	2	1.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

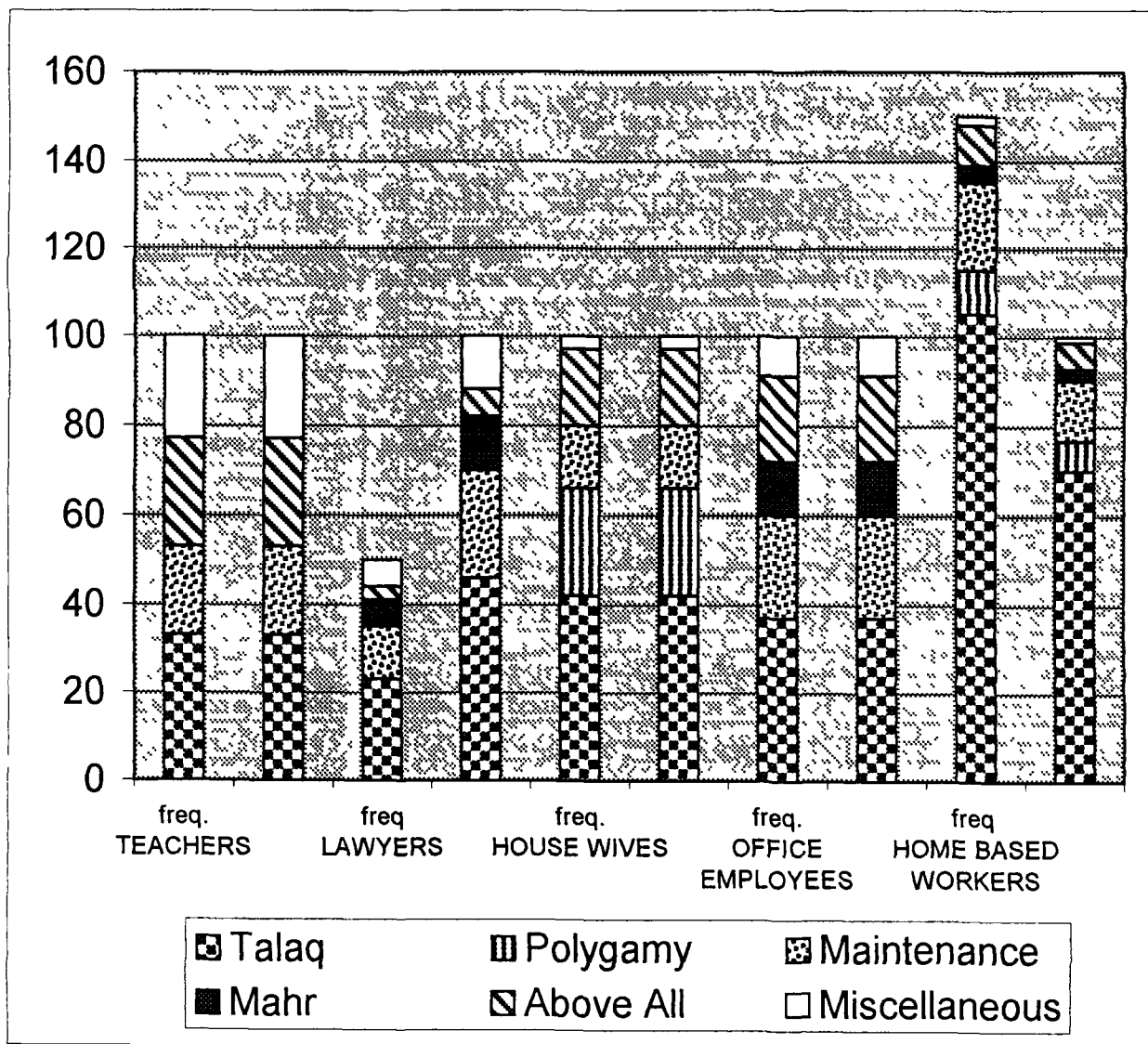
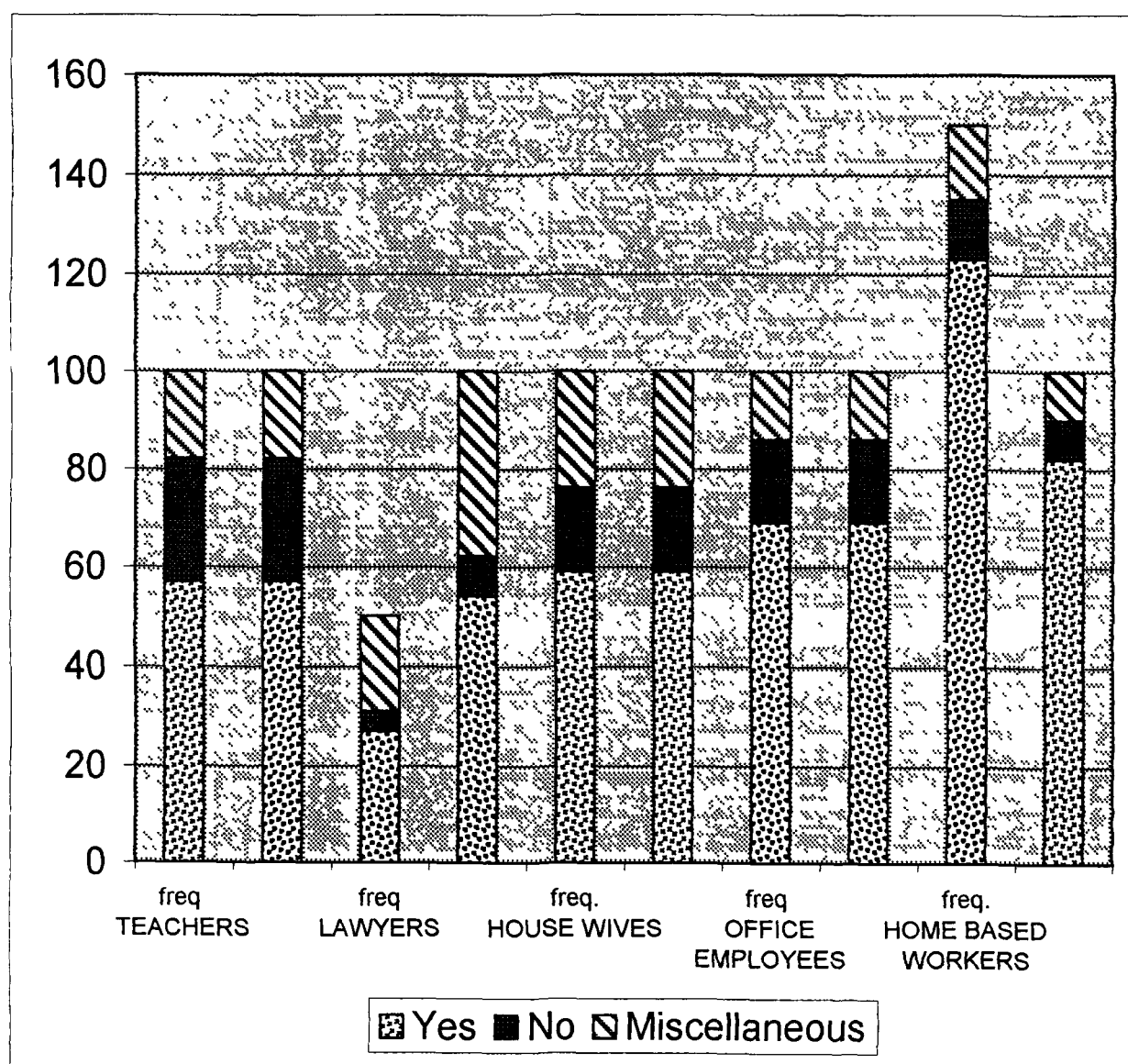


TABLE 9.4

ABOLITION OF UNILATERAL TALAQ IN FUTURE

ITEM NO	ABOLITION OF TALAQ	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	57	57	27	54	59	59	69	69	123	82
2	No	25	25	4	8	17	17	17	17	12	8
3	Miscellaneous	18	18	19	38	24	24	14	14	15	10
	TOTAL	100	100	50	100	100	100	100	100	150	100



The following table 9.3 gives the detail under Muslim Personal law preference of which issue is most discriminatory to women. In teachers category, among all preference frequency of first preference is talaq counts 33% and second category those says all the preferences are discriminatory counts as 24% and third preference is maintenance counts as 20%.

In the lawyers class first preference is talaq counts as 46% second preference is maintenance counts as 24% and third preference is mahr counts as 12%. In office employees category, first preference is also talaq counts as 37% and second preference is maintenance counts as 23% and third preference is all the above issues counts as 19%. In housewives category, first preference for discrimination is talaq counts as 42% and second preference is polygamy counts as 24% and third preference is all the above mentioned issues counts as 17%. In last category i.e. home based workers, talaq and maintenance first two preferential categories. Talaq as a preference counts as 70% and maintenance counts as 13.3%.

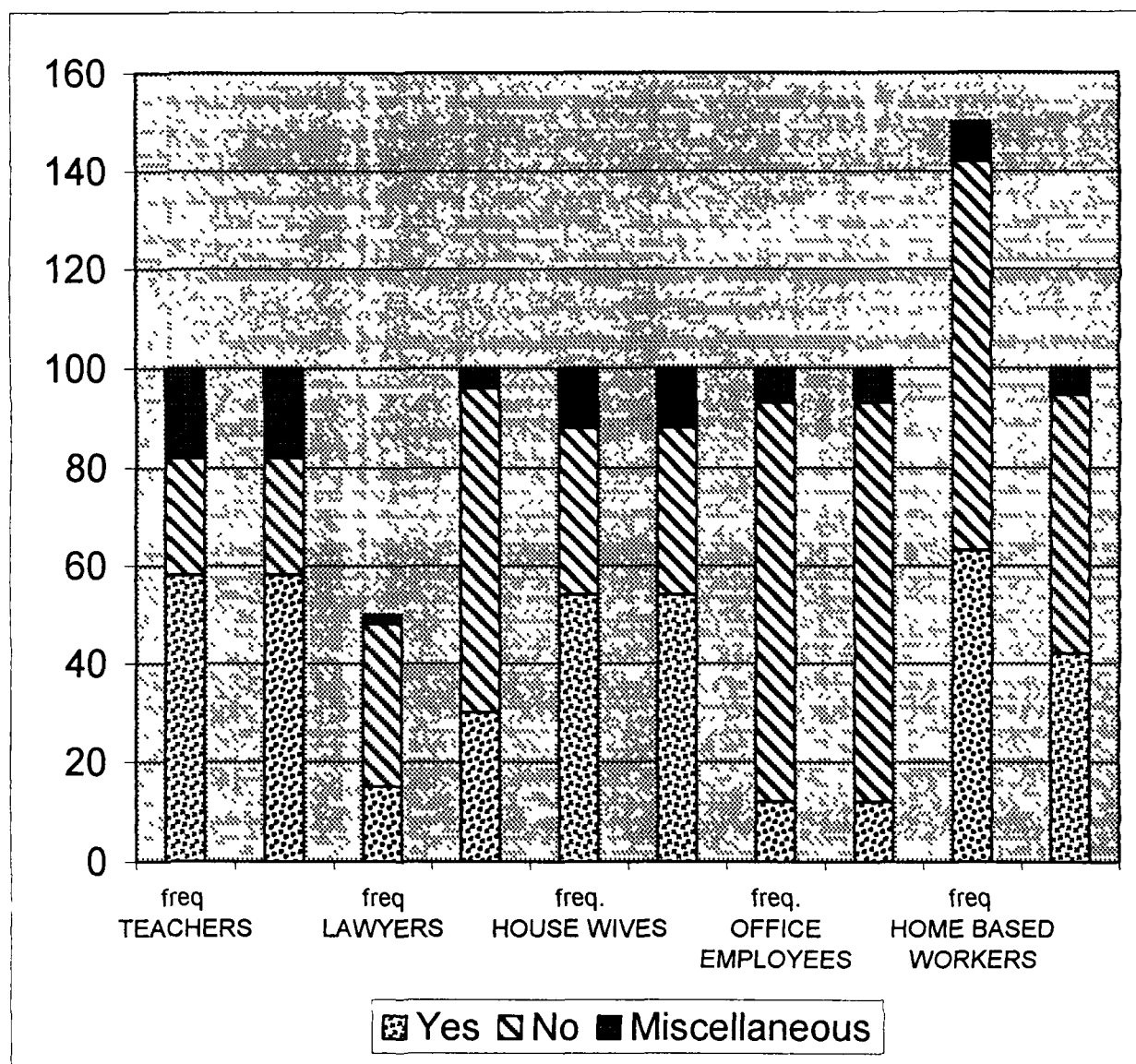
From the above discussion what clearly emerges out is that all the respondents are very critical firstly about talaq and secondly about maintenance.

Table 9.4, talks about the misuse and abolition of unilateral talaq in future. In teachers class, the responses as yes for the abolition of unilateral talaq shows as 57% and responses as no

TABLE 9 5

ABOLITION OF PRACTICE OF POLYGAMY IN FUTURE

ITEM NO	ABOLITION OF POLYGAMY	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	58	58	15	30	54	54	12	12	63	42
2	No	24	24	33	66	34	34	81	81	79	52.67
3	Miscellaneous	18	18	2	4	12	12	7	7	8	5.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



counts as 25%. In lawyers class, responses for yes counts as 54% and for no counts as 8%. In office employees class, responses for yes counts as 69% and for no counts as 17%. In housewives and home based workers classes, responses counts for option yes as 59% and 82%, and responses for option no counts as 17% and 8%.

From the above table we can interpret that women are bound to feel the pressure of unilateral talaq being a potential weapon in the hands of their husbands. Inevitably, their reactions to it would be different, and this, we would say, is more true for women who belong to economically disadvantaged sectors. So whether or not unilateral talaq is common, women remains vulnerable, for the fact that the right to divorce is rested solely to the man and the knowledge that he can use it without having to be accountable in any way, has created a tangible fear in their minds. Lastly, this was cleared from the above interpretation that mostly women were unequivocally in favour of the abolition of unilateral talaq in future.

Table 9.5 show the need of abolition of polygamy in future. In teachers category, those says yes for the frequency to stop practice of polygamy in future counts as 58% and those says no counts as 24%. In lawyers category those are says yes for this counts as 30% and those are says no counts as 66%. In office employees, those are says yes counts as only 12% and those are says no counts as 81%. In house wives those are agree for it counts as 54% and those are not agree for it counts as 34%. In last

TABLE 9.6

PAYMENT OF MAHR AMOUNT AFTER DIVORCE

ITEM NO	MAHR PAYMENT ON DIVORCE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	66	66	44	88	65	65	87	87	131	87.33
2	No	17	17	2	4	12	12	4	4	12	8
3	Miscellaneous	17	17	4	8	23	23	9	9	7	4.67
	TOTAL	100	100	50	100	100	100	100	100	150	100

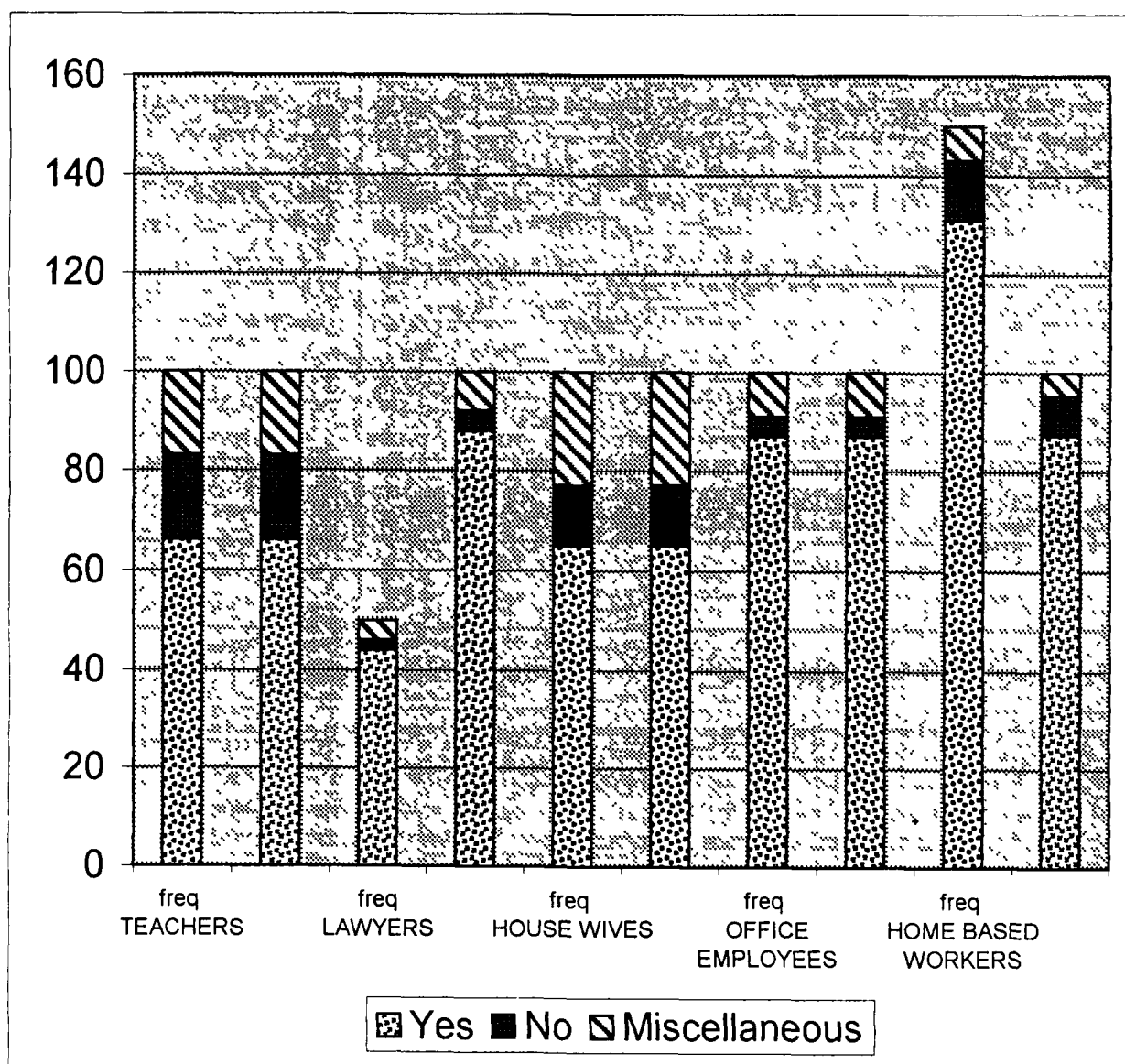
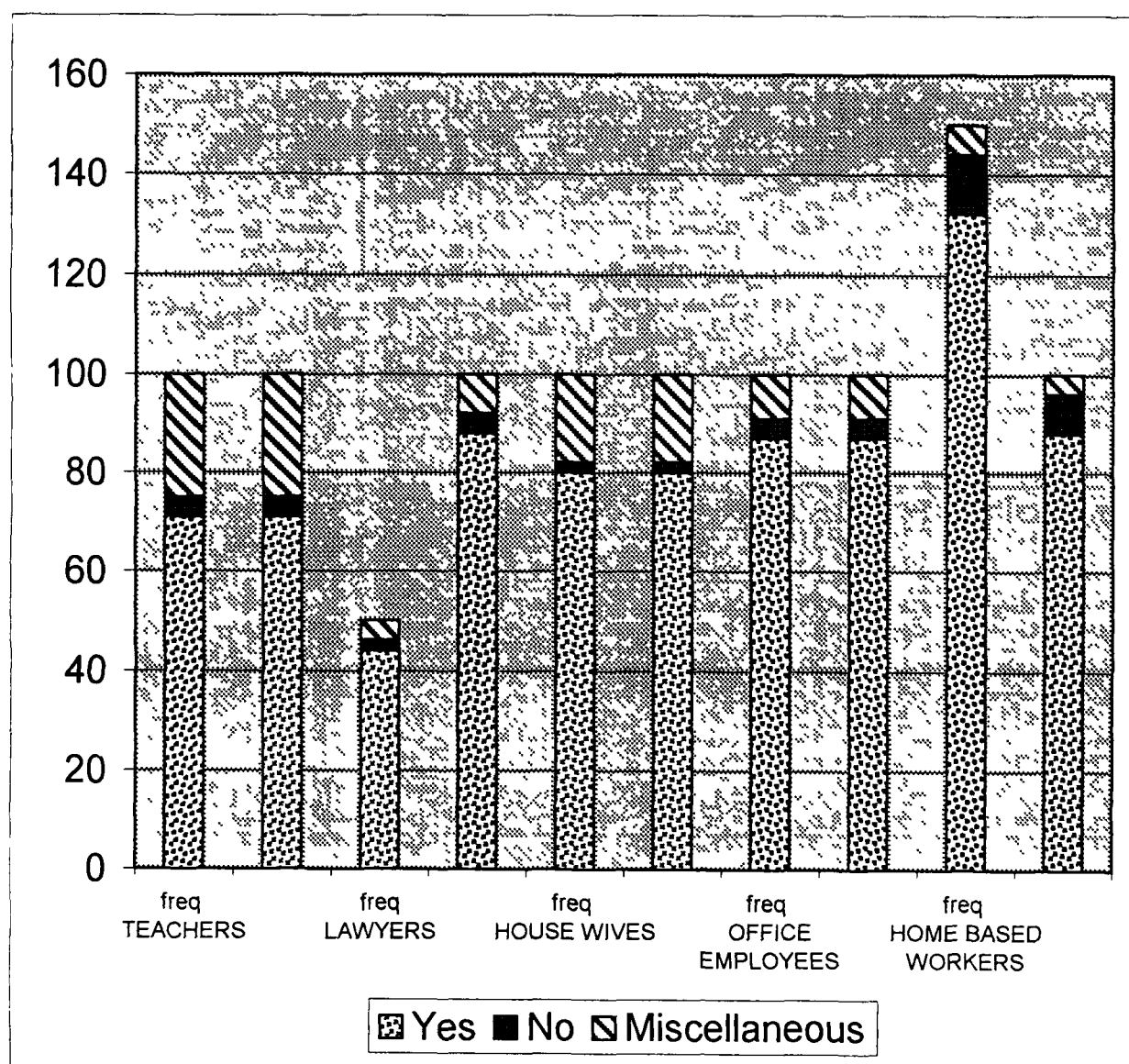


TABLE 9 7

KNOWLEDGE ABOUT THE MEANING OF THE TERM IDDAT

ITEM NO	KNOWLEDGE OF IDDAT	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	71	71	44	88	80	80	87	87	132	88
2	No	4	4	2	4	2	2	4	4	12	8
3	Miscellaneous	25	25	4	8	18	18	9	9	6	4
	TOTAL	100	100	50	100	100	100	100	100	150	100



category of home based workers, those are agree for it rates as 42% and those are not agree for it rates as 52.6%.

Now from the above interpretation of the data except teachers class which is supposed to be most elite class want to abandoned the practice of polygamy in future. But rest of all the categories says there is no need to abolish it. As in Islam the practice of polygamy is allowed. It should however be noted that Islam did not introduce the custom but rather restrict the practice already existing. No doubt Islam allow the men to have four wives but on the condition that all four be equally treated, financially and mentally.

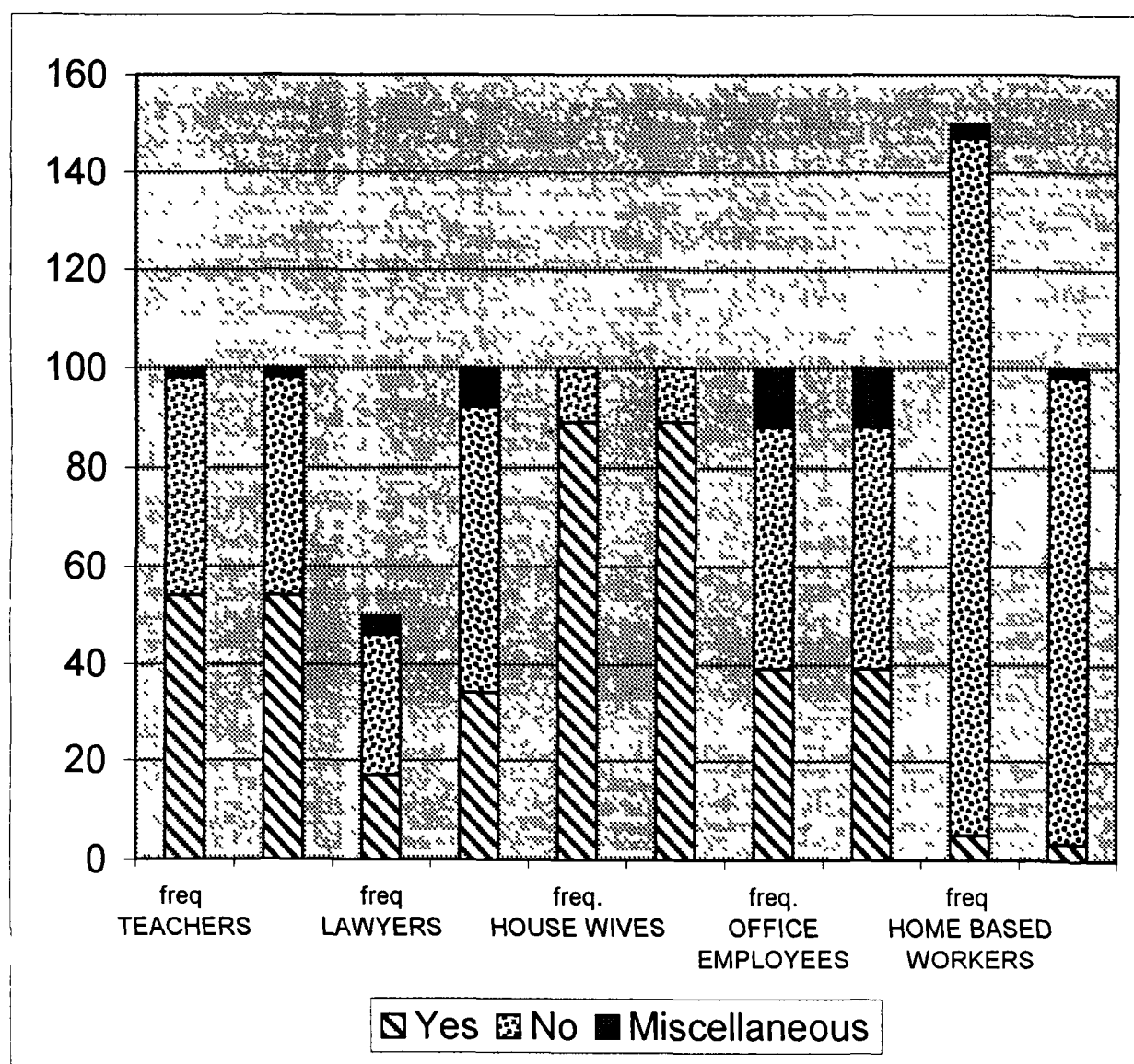
Table 9.6 shows the mode of payment of mahr amount after divorce. In all the categories respondents wanted to take their mahr even after divorce. In teachers class, 66% wanted to take mahr after divorce and 17% don't wanted to take it In lawyers class 88% want to take mahr amount after divorce and 4% left it. In office employees class, 87% want to take it and 4% left it. In housewives, 65% in favour of taking mahr amount after divorce and 12% are not in favour of taking it. Lastly in home based workers class, 87.3% are agree to take mahr amount rest 8% are not agree for it.

In the Table 9.7 we will count the frequency amongst all the respondent about meaning of the term iddat. In teachers section 71% says yes for it and 4% says do not know the meaning of the term iddat. Lawyers section, indicates the reply of yes as 88% and

TABLE 9.8

OPINION TO FOLLOW IDDAT IN FUTURE EVENTS

ITEM NO	FOLLOWING IDDAT	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	54	54	17	34	89	89	39	39	5	3.33
2	No	44	44	29	58	11	11	49	49	142	94.67
3	Miscellaneous	2	2	4	8	0	0	12	12	3	2
	TOTAL	100	100	50	100	100	100	100	100	150	100



reply of no 4%. In office employees class, responses for yes counts as 87% and responses for no counts as 4%. In housewives responses, for yes rates as 80% and for no rates as 2%. Finally in home based workers class, agreement for yes refer as 88% and disagreement for no refers as 8%

It can be interpreted from above table most of the married women are aware with the meaning of the term iddat.

We can see under home based workers class frequency not to follow iddat in future counts very high percentage. Because they belong to lower economic strata of the society. Instances for iddat not being practiced are common under service class and under home based workers class. One school teacher said to us, I had decided to cut short the iddat period, after the death of my husband. I did not mean any disrespect to religion but my circumstance, led me to do it. My husband died at the time of when our house was being constructed, we had taken loans. I had two children to support. If I had gone through four months of iddat, I would have lost my job in the school. So I left it. I beg forgiveness for both Allah and my husband and resumed duty, so we can say service class may phase these types of hardships and are not willing to follow the period of iddat. .

In table 9.8, talks about opinion of all the respondents to follow iddat period in future events. In teachers category, those are says yes counts as 54% and those are says no counts as 44%. In

TABLE 9.9

DOWRY RETURNED AFTER DIVORCE

ITEM NO	DOWRY RETURNED	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	78	78	32	64	68	68	46	46	8	5.33
2	No	17	17	9	18	29	29	37	37	17	11.34
3	Miscellaneous	5	5	9	18	3	3	17	17	125	83.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

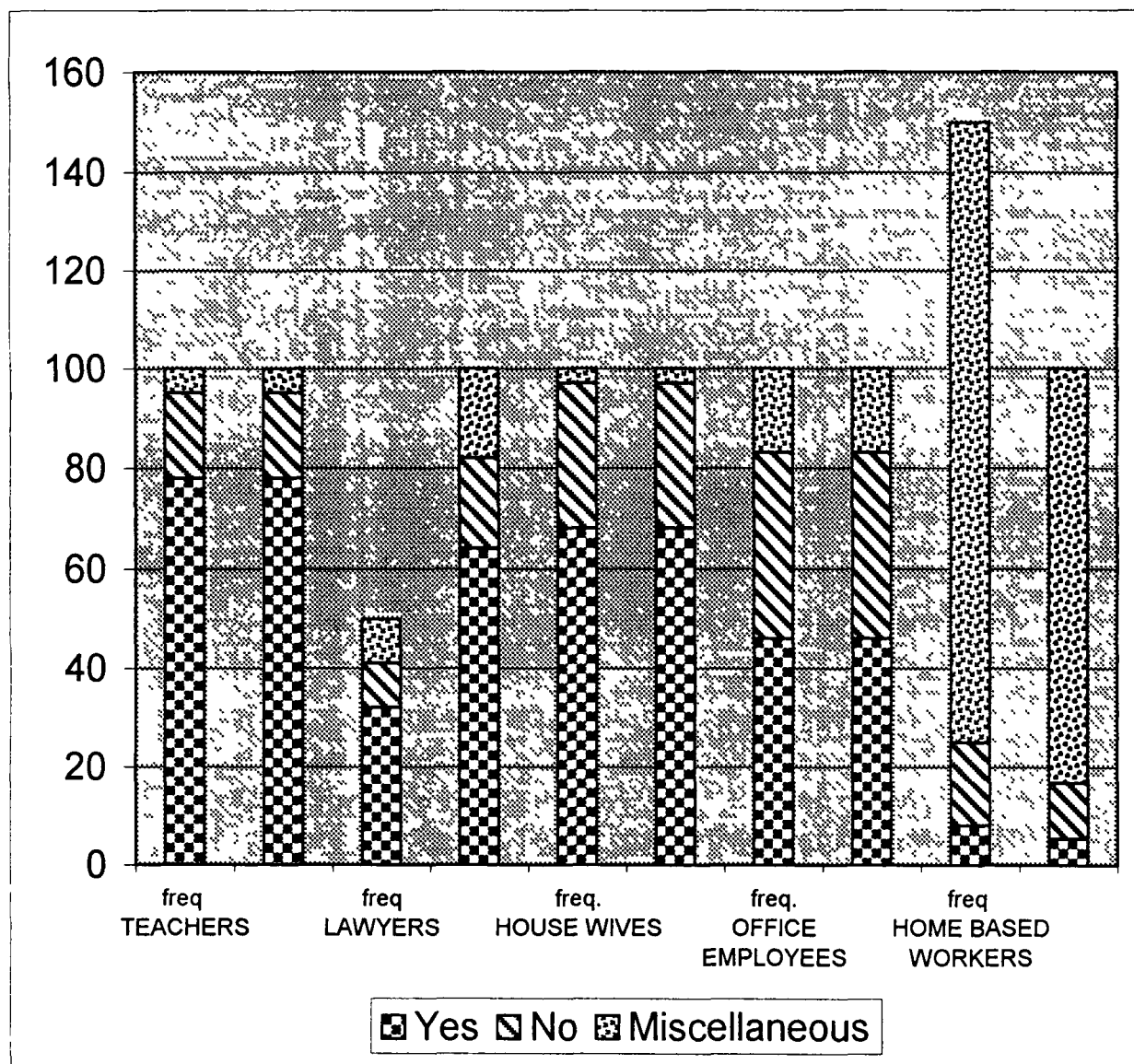
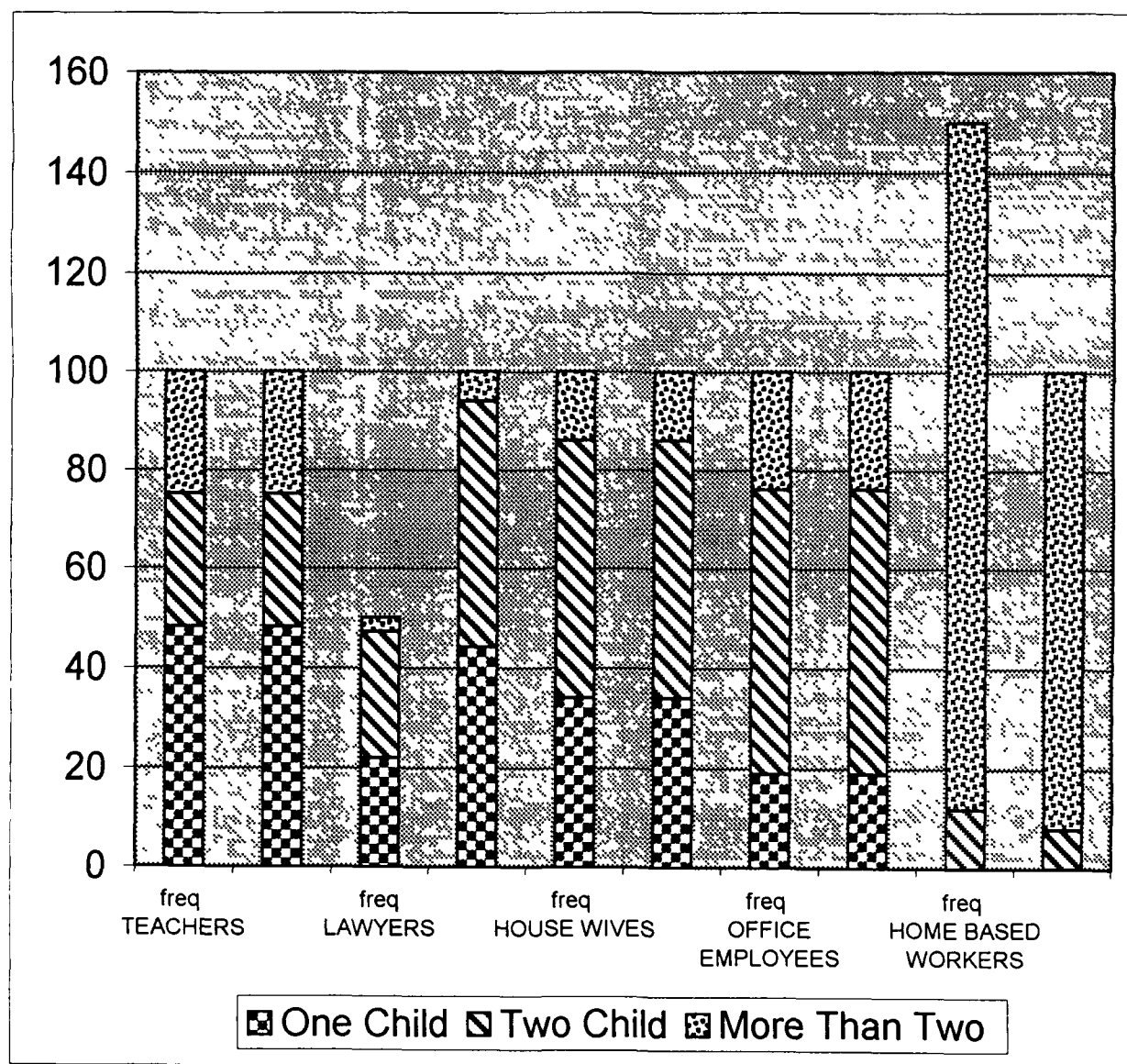


TABLE 9.10

VIEWS ABOUT IDEAL SIZE OF THE FAMILY

ITEM NO	FAMILY SIZE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	One Child	48	48	22	44	34	34	19	19	0	0
2	Two Child	27	27	25	50	52	52	57	57	12	8
3	More Than Two	25	25	3	6	14	14	24	24	138	92
	TOTAL	100	100	50	100	100	100	100	100	150	100



lawyers category, those says yes counts as 34% and those says no 58%. In office employees, the frequency of yes counts as 39% and frequency of no counts as 49%. Under housewives and home based workers classes, the frequency for yes counts as 89% and 3.3%. In frequency of no counts as 11% and 94.6%.

According to table 9.9, in teachers category, 78% respondents think that dowry should be returned after divorce and 17% respondents say no for it. In lawyers class, 64% respondents say yes for it and 18% say no for it. In office employees class, 46% reply in affirmative and 37% reply in negative. In housewives and home based workers responses for yes are as 68% and 5.3% and responses for no are as 29% and 11.3% respectively.

Table 9.10, talks about the ideal size of family. There we assess the preferences of one child, two child or more than two children. In this table under teachers class, frequency about one child 48%, for two child 27% and for more than two child 25%. In lawyers class, responses for one child emerges as 44% and for two children 50% and 6% emerges for more than two, an office employees class reply for one child as 19% for two child is 57% and more than two as 24%. In housewives, responses for one as 34%, for two as 52% and for more than two as 14%. Lastly in home based workers class preference at more than two children is first preference and counts as 92% and rest are insignificant responses. Table 9.11, framed the opinion about the necessity of the male child in the Muslim family. Unlike Hindu family when son plays important role

TABLE 9.11

VIEWS ABOUT THE NECESSITY OF THE MALE CHILD

ITEM NO	MALE CHILD	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	33	33	10	20	48	48	12	12	80	53.33
2	No	53	53	33	66	23	23	65	65	65	43.33
3	Miscellaneous	14	14	7	14	29	29	23	23	5	3.34
	TOTAL	100	100	50	100	100	100	100	100	150	100

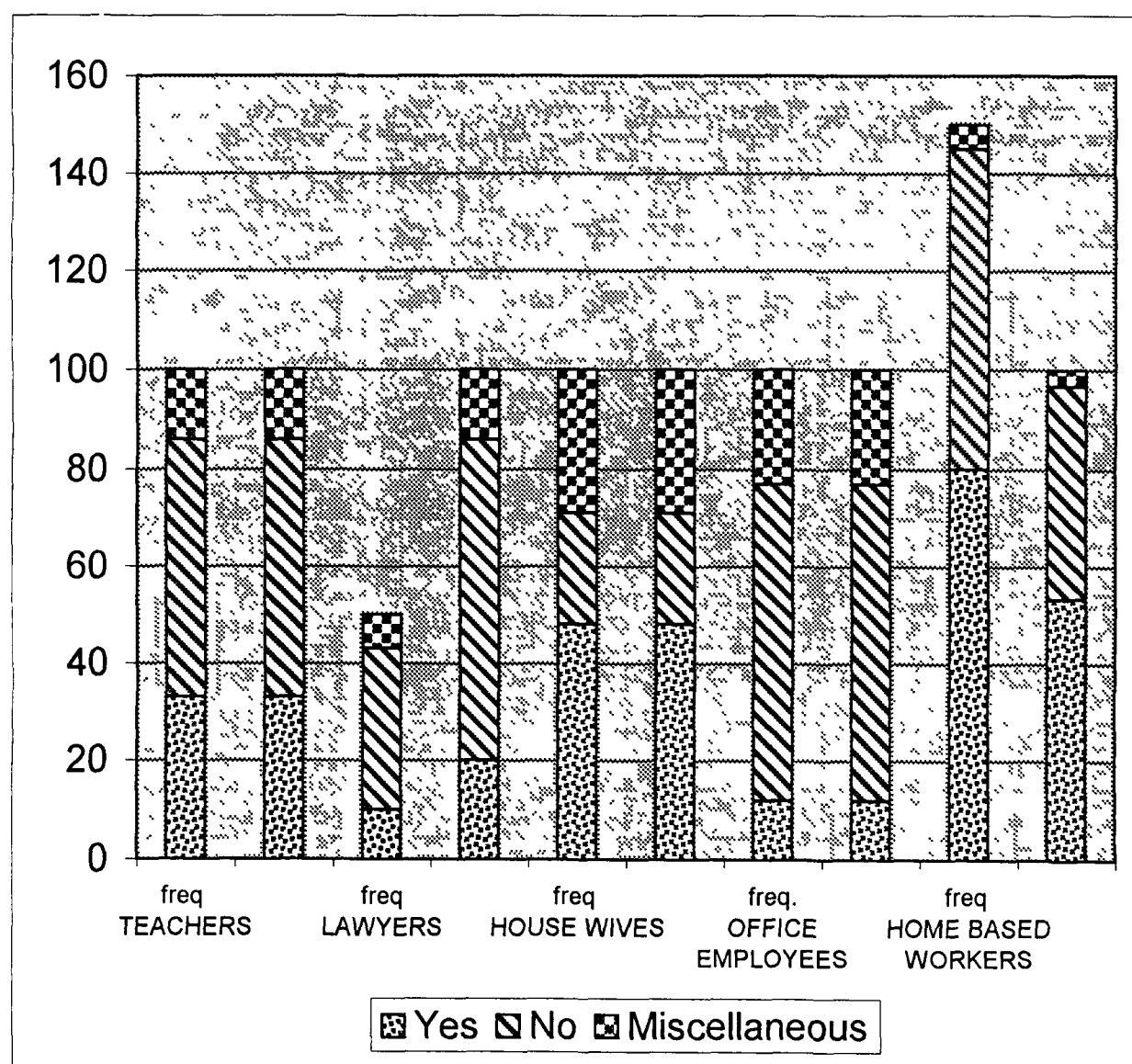


TABLE 9.12

POLYGAMY IS ISLAMIC

ITEM NO	POLYGAMY IS ISLAMIC	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	77	77	42	84	67	67	79	79	129	86
2	No	19	19	2	4	18	18	4	4	15	10
3	Miscellaneous	4	4	6	12	15	15	17	17	6	4
	TOTAL	100	100	50	100	100	100	100	100	150	100

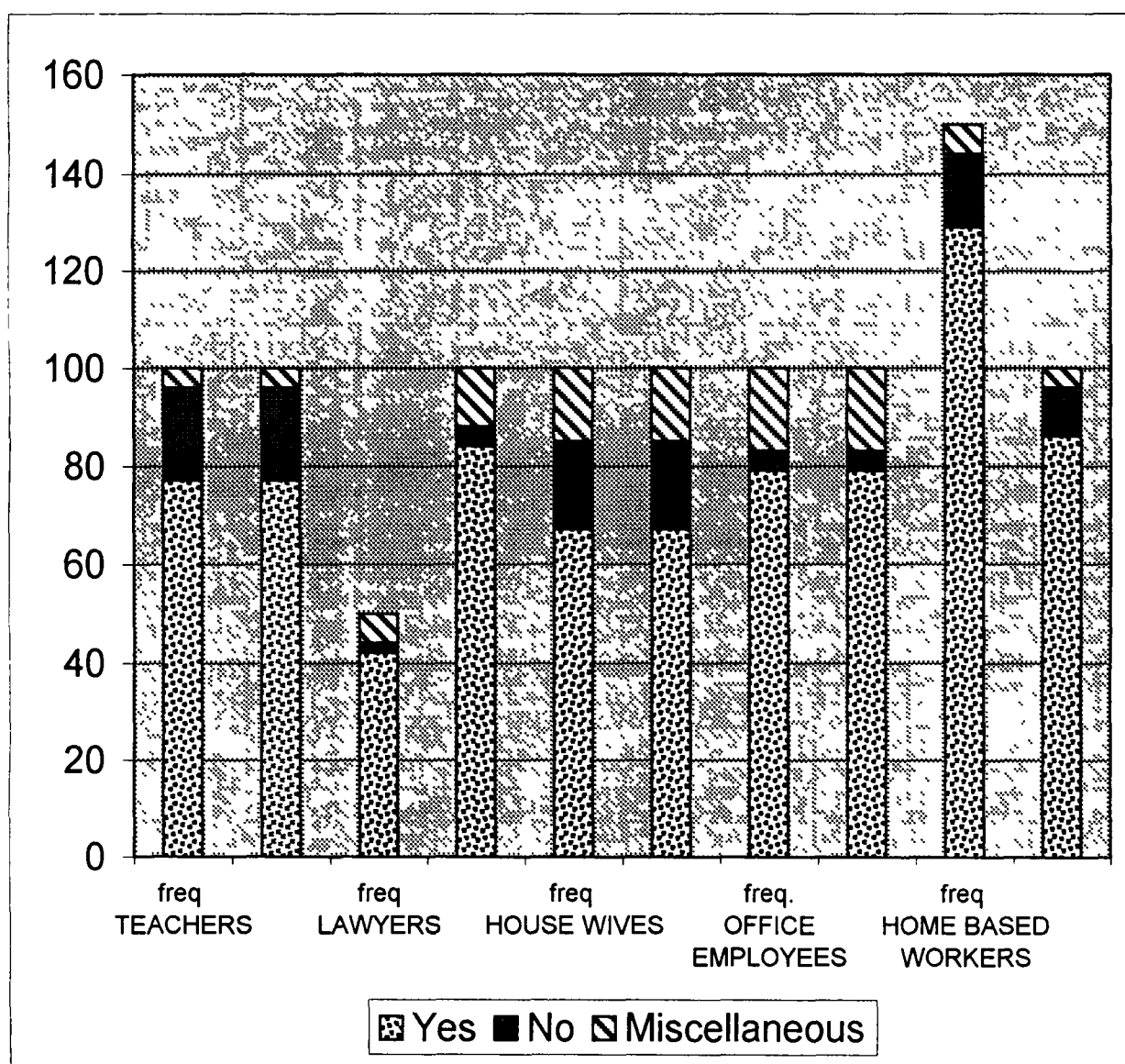
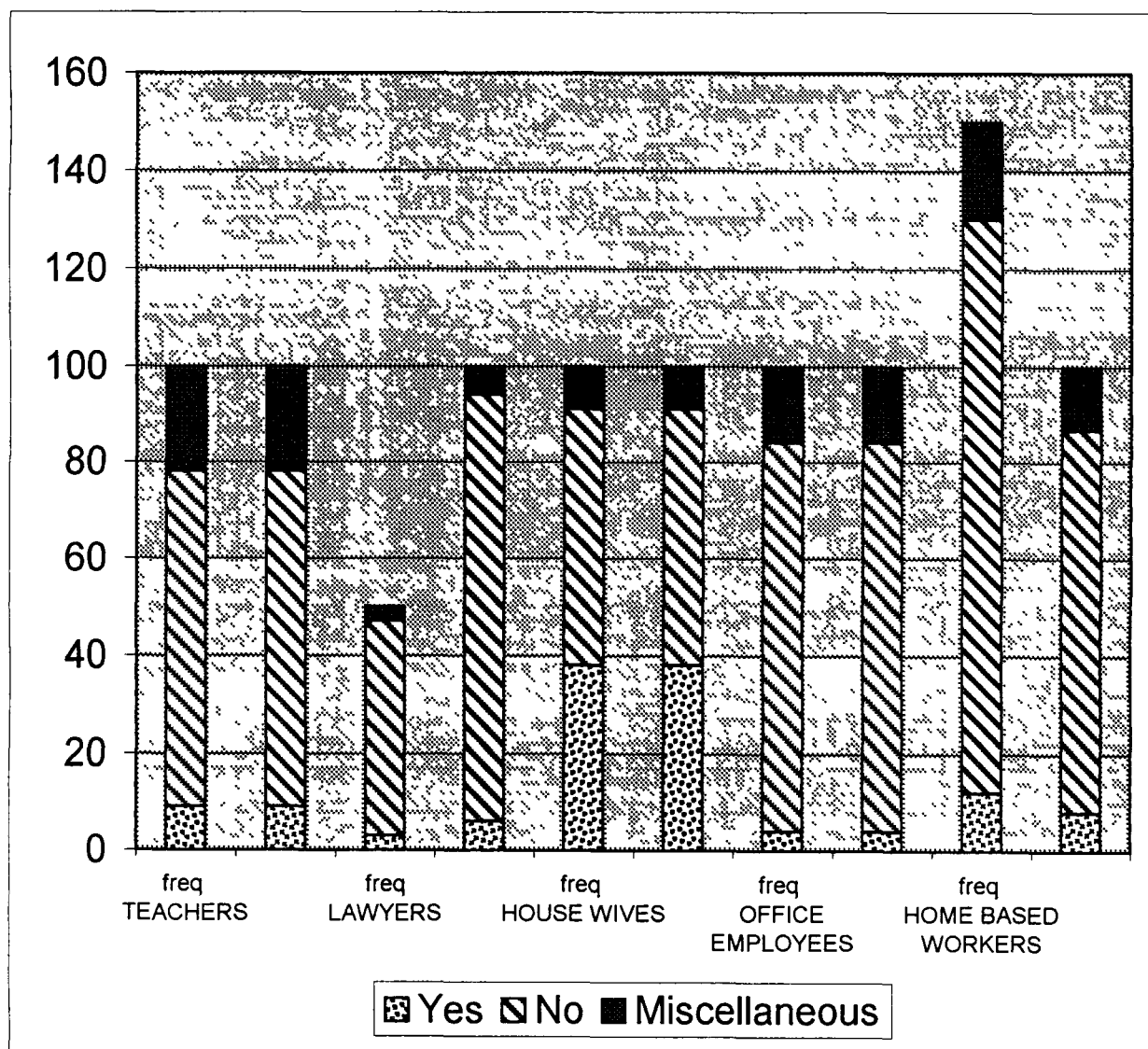


TABLE 9.13

IF NO MALE CHILD HUSBAND GO FOR SECOND MARRIAGE WITH WIFE CONSENT

ITEM NO	SECOND MARRIAGE IF NO MALE CHILD	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	9	9	3	6	38	38	4	4	12	8
2	No	69	69	44	88	53	53	80	80	118	78.67
3	Miscellaneous	22	22	3	6	9	9	16	16	20	13.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



and offer all the rituals. In teachers section responses for yes courts as 33% and for no courts as 53%. In lawyers class responses for necessity about male child courts as 20% and no necessity counts as 66%. In office employees class reply for yes indicates as 12 % and for no indicates as 65%. In housewives responses for yes shows as 48% and for no shows as 23%. Under home based class responses for yes rates as 53.3% and responses no rates as 43.3%.

It can be interpreted from above tables 9.10 and 9.11. under Muslim ideal family necessity of male child is not necessary unlike Hindu families.

Table No. 9.12 refers opinion about polygamy whether it is Islamic? In teachers class, 77% says yes it is and only 19% says not Islamic. In lawyers class 84% says yes and rest 4% says no. In office employees class, 79% says yes and only 4% says no. Finally in housewives and home based workers responses for yes as 67% and 86%, and responses for no as 18% and 10%.

In the table 9.13 we can assess the opinion of all the respondents about the feeling if no male child, whether wife given permission for husband to solemnised second marriage. In teachers class reply for yes counts as 9% and for no 69%. In lawyers responses for yes counts as 6% and for no counts as 88%. In office employees class responses for yes as 4% and for no as 80%. In housewives and homes based workers responses for no certainly high as 53% and 78.6%, and for yes counts as 38% and 8% respectively.

TABLE 9.14

HUSBAND LIABILITY TO MAINTAIN HIS WIFE & SIBLINGS

ITEM NO	MAINTENANCE	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	60	60	41	82	62	62	86	86	144	96
2	No	12	12	7	14	38	38	4	4	4	2.67
3	Miscellaneous	28	28	2	4	0	0	10	10	2	1.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

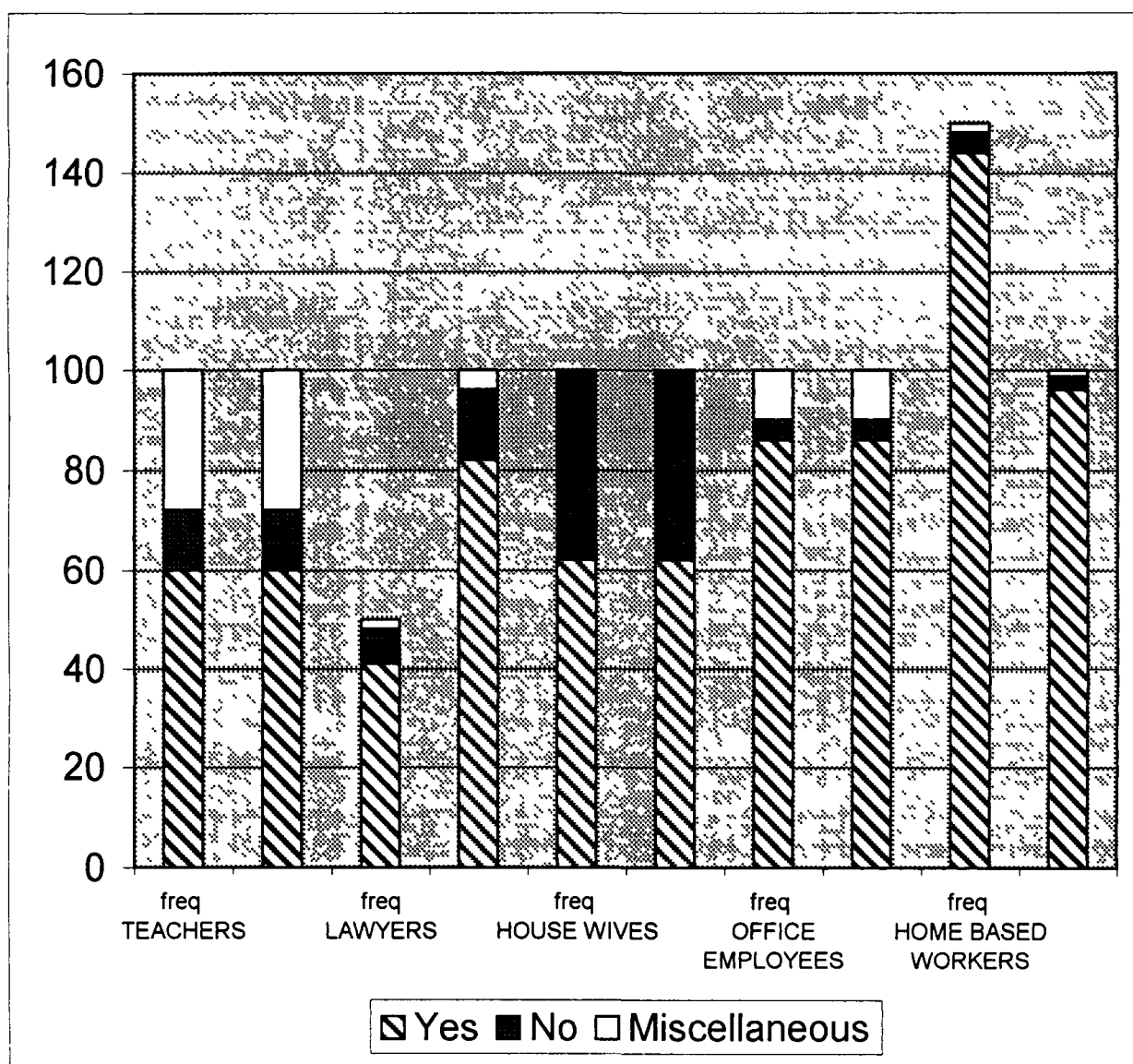


TABLE 9.15

USE OF CONTRACEPTIVES AND ABORTION IS UN-ISLAMIC

ITEM NO	CONTRACEPTIVE/AB- ORTION UN-ISLAMIC	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	66	66	42	84	47	47	79	79	129	86
2	No	17	17	0	0	12	12	12	12	17	11.33
3	No Comments	17	17	8	16	41	41	9	9	4	2.67
	TOTAL	100	100	50	100	100	100	100	100	150	100

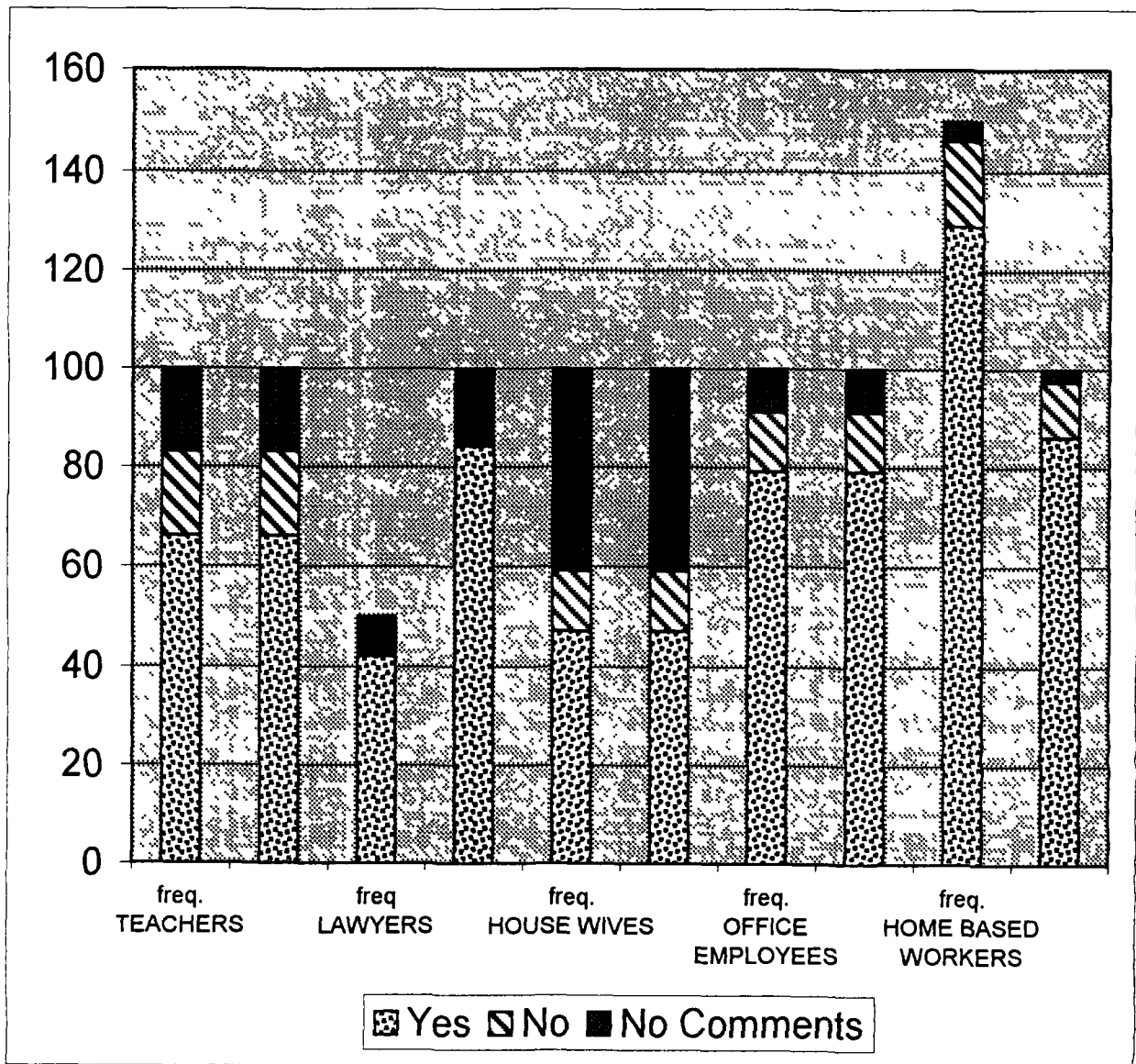


Table 9.14 indicates responses of all the respondents about husbands liability to maintain his wife and siblings. In teachers category the frequency for liability counts as 60% and for not liable counts as 12%. There are high percentage among respondents those refused to give any comment. In lawyers category frequency for option yes counts as 82% and for option no counts as 14%. In office employees category the responses for yes count as 86% and for no counts as 4%. In housewives and home based workers their responses for reply yes counts as 62% and 96% and for their reply for no counts as 38% and 2.6%.

The table 9.15 to assess about the practice of use of contraceptives and abortion as un-Islamic. In the teachers categories responses for yes counts as 66% and 17% for responses for no. In lawyers reply for yes emerges as 84% and for no responses is nil. In office employees categories frequency for yes rates as 79% and 12% for no frequency. In housewives category responses for yes counts as 47% and 12% for no responses. In last category of the home based workers option for yes counts as 86% and option for no responses counts as 11.3%.

These inferences shows the interpretation that Muslim always have number of children in their families. Because under Islamic use of family planning devices are bound with some exceptions.

TABLE 9.16

FREEDOM TO SPEND INCOME ACCORDING TO HER WISHES

ITEM NO	SPEND INCOME	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	79	79	39	78	34	34	57	57	80	53.33
2	No	4	4	10	20	25	25	25	25	67	44.67
3	Miscellaneous	17	17	1	2	41	41	18	18	3	2
	TOTAL	100	100	50	100	100	100	100	100	150	100

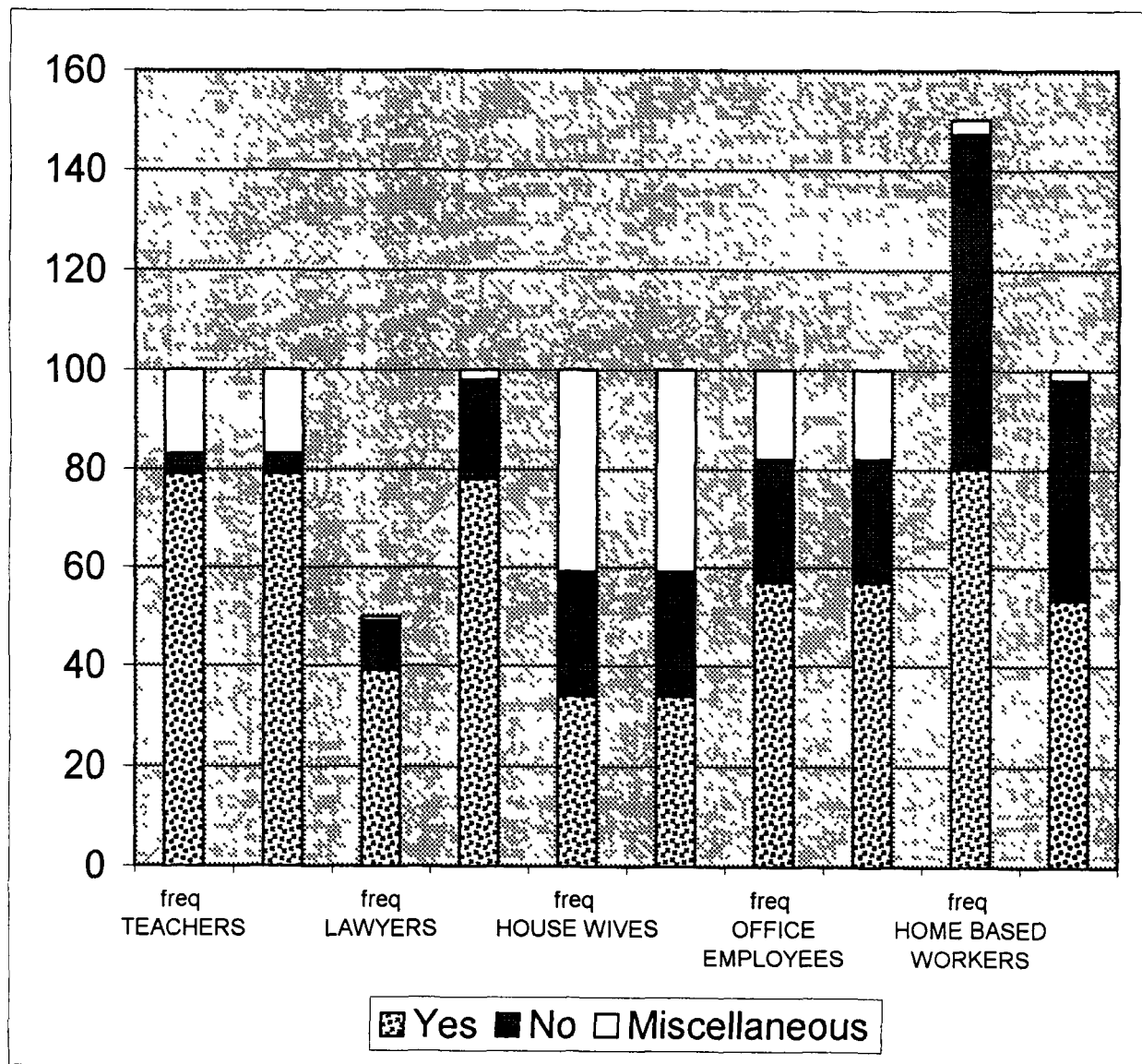
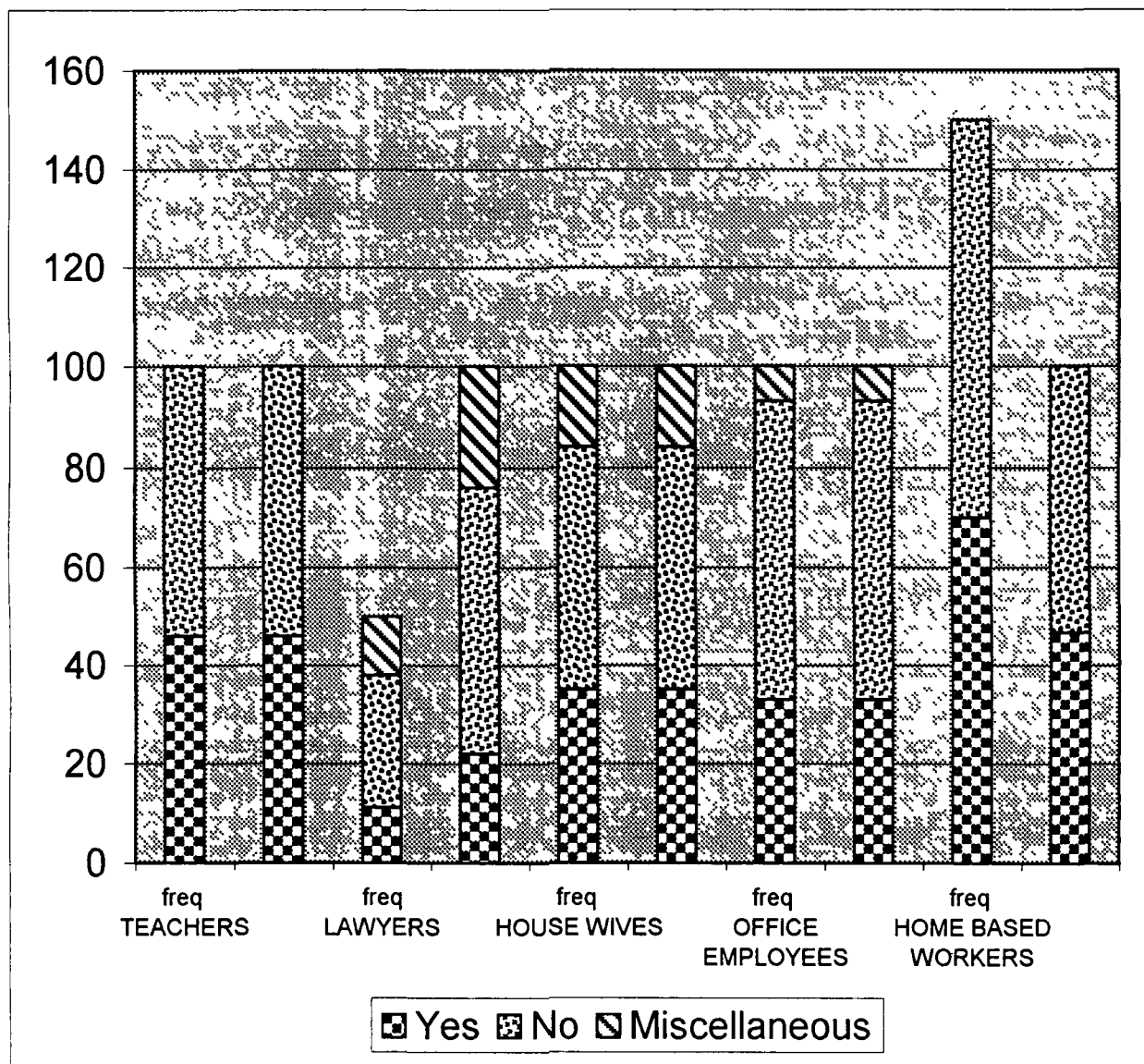


TABLE 9.17

WIFE HANDOVER HER INCOME TO HER HUSBAND

ITEM NO	INCOME HANDOVER TO HUSBAND	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	46	46	11	22	35	35	33	33	70	46.67
2	No	54	54	27	54	49	49	60	60	80	53.33
3	Miscellaneous	0	0	12	24	16	16	7	7	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



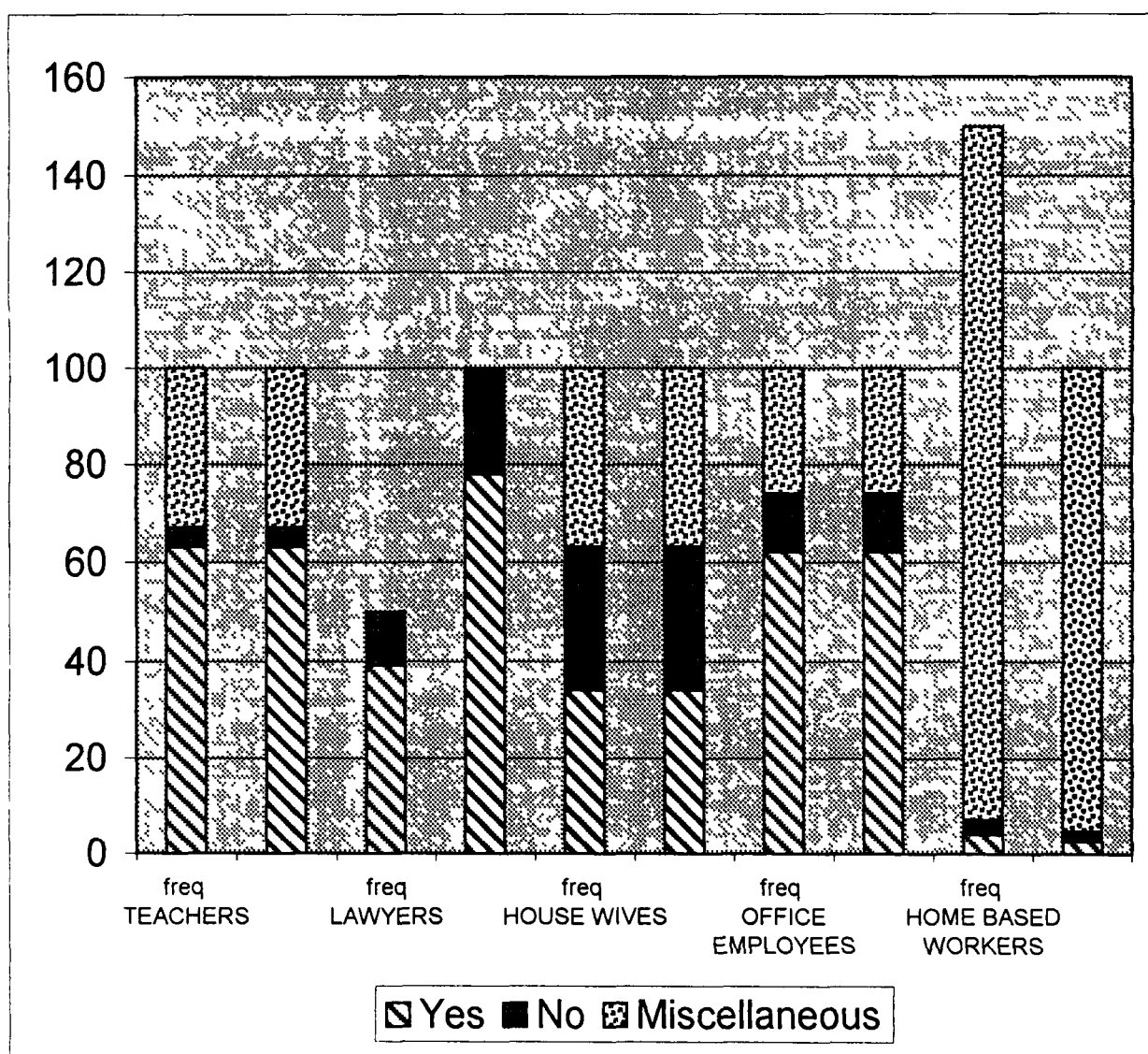
The table 9.16, gives the details about women's freedom to spend income according to her wishes. this gives the informations about the employment and her income in all the five categories. Among all five, three are high medium earning classes and rest are low earning classes. In the categories of teachers, lawyers and office employees we find highest income groups and home based workers lies in very low income group. In teachers categories the frequency about freedom to spend income according to her wishes lies as 79% and 4% for frequency about no. In lawyers category the frequency for responses yes lies as 78% and for no responses lies as 20%. Under office employees category the responses for yes option counts as 57% and for no responses option counts as 25%. In house wives and home based workers responses for yes reply counts as 34% and 53.3%. And for responses for no reply counts as 25% and 44.6%.

Table 9.17, talks about the attitudes of all the respondents, here frequency shows how many wives hand over their income to their husband? In teachers category the reply for yes represent as 46% and 54% represent for no reply. In lawyers category the responses for yes reply counts as 22% and for no reply counts as 54%. In office employees category the responses for yes rates as 33% and for no as 60%. Similarly in home based workers class the responses for yes counts on 46.6% and for no 53.3% Here housewives also have run some self business from these they are earn very meagre earnings. So responses for housewives are to so significant.

TABLE 9.18

FREEDOM TO OPEN AND OPERATE HER BANK ACCOUNT INDEPENDENTLY

ITEM NO	OPERATE BANK ACCOUNT	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	63	63	39	78	34	34	62	62	4	2.67
2	No	4	4	11	22	29	29	12	12	3	2
3	Miscellaneous	33	33	0	0	37	37	26	26	143	95.33
	TOTAL	100	100	50	100	100	100	100	100	150	100



Thus from the foregoing analysis under tables 9.10 and 9.17, we can conclude that majority of women want to spend their income according to their own wishes. They don't want to hand over it to their husbands.

Table 9.18 talks about the attitude of women about her freedom to open bank account independently or not. Whether she pressurise by her husband to have joint accounts. Generally, frequency of women with no accounts in a bank is low amongst unemployed women, while it is high amongst employed women. In teacher class the frequency about yes responses counts as 63% and for no responses counts as 4%. There are high frequency amongst those not filled this column as well. In lawyers class the responses for yes shows as 78% and for no shows as 22%. In office employees class the reply for yes represents as 62% and for no reply represent as 12%. In housewives the reply for yes indicates as 34% and for no indicates as 29%. In home based workers the frequency of yes counts as 2.6% and 2% for no responses. Here we see that large frequency about those not filled this column as they don't have extra money for saving. Their earnings just fulfil their day to day necessities.

In above mentioned table when surprising of finding shown under the category of house wives responses, housewives high percentage open and operate her own bank account independently in comparison with the other categories.

TABLE 9.19

FREEDOM TO OPERATE JOINT BANK ACCOUNT INDEPENDENTLY

ITEM NO	JOINT BANK ACCOUNT	TEACHERS		LAWYERS		HOUSE WIFE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq	%age
1	Yes	63	63	37	74	39	39	60	60	4	2.67
2	No	6	6	4	8	29	29	20	20	3	2
3	Miscellaneous	31	31	9	18	32	32	20	20	143	95.33
	TOTAL	100	100	50	100	100	100	100	100	150	100

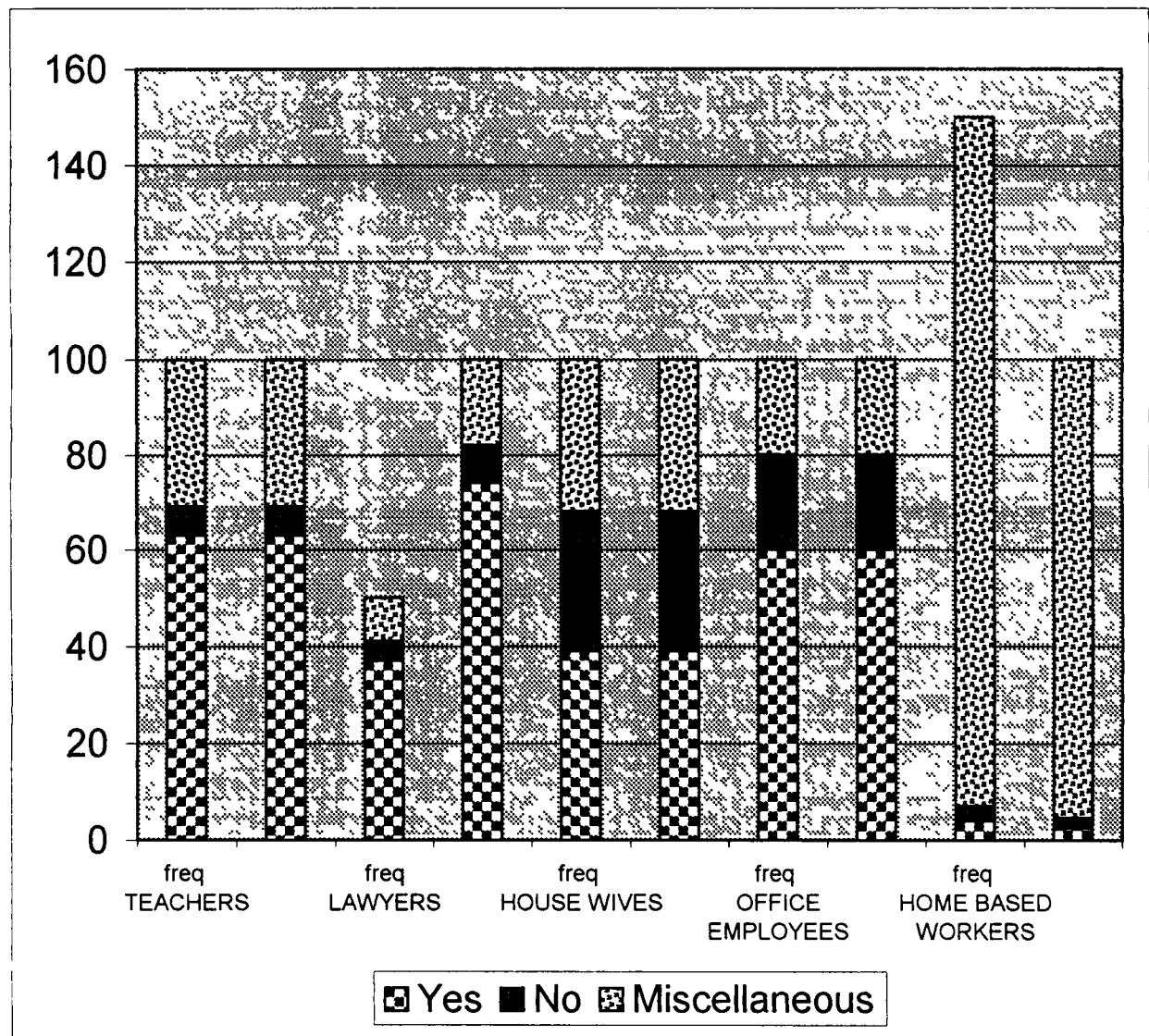
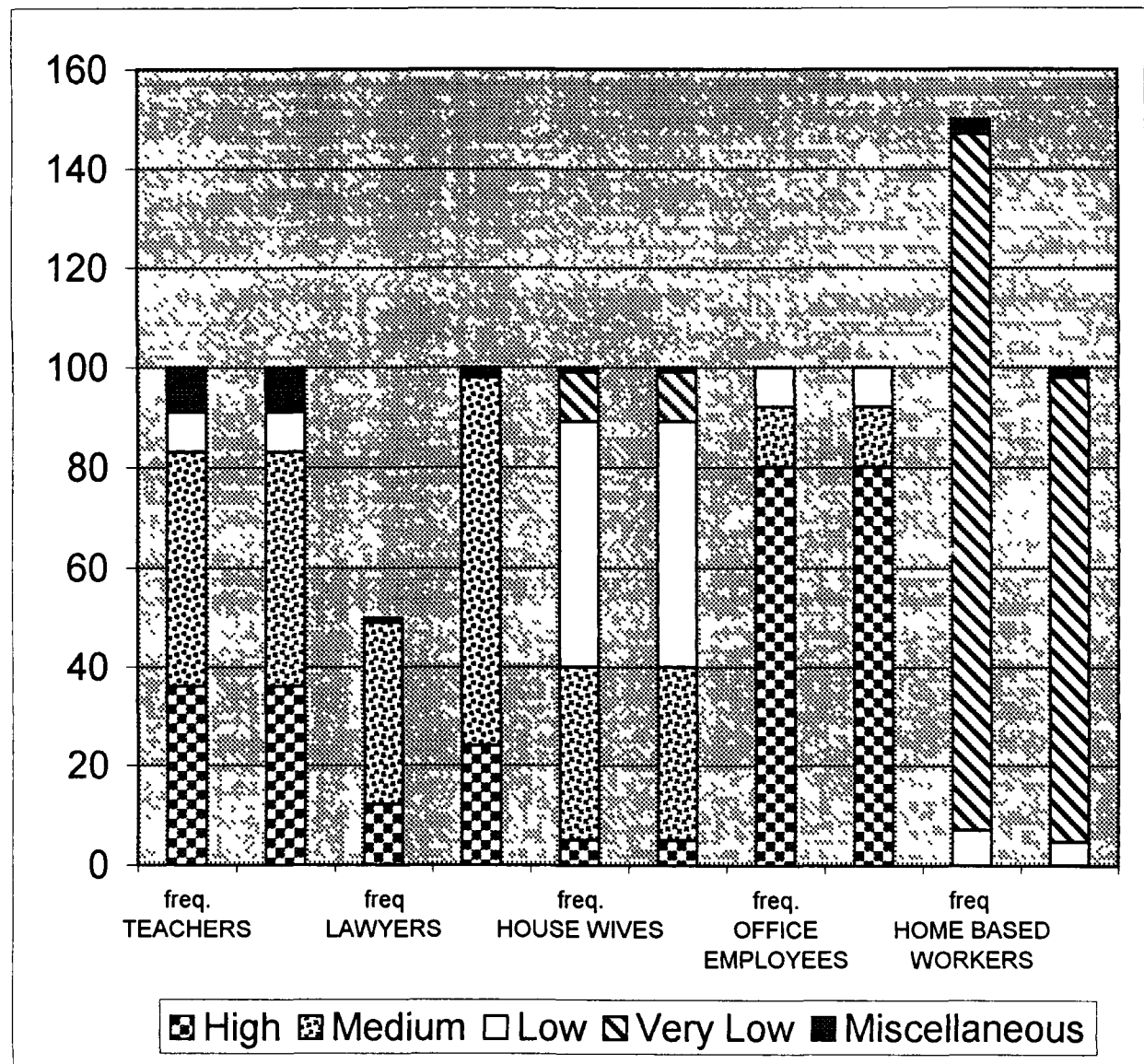


TABLE 9.20

FAMILY INCOME LEVEL WHEN BOTH ARE EARNING

ITEM NO	JOINT FAMILY INCOME	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	High	36	36	12	24	5	5	80	80	0	0
2	Medium	47	47	37	74	35	35	12	12	0	0
3	Low	8	8	0	0	49	49	8	8	7	4.67
4	Very Low	0	0	0	0	10	10	0	0	140	93.33
5	Miscellaneous	9	9	1	2	1	1	0	0	3	2
	TOTAL	100	100	50	100	100	100	100	100	150	100



In table 9.19 we will see the position of woman and her freedom while operate joint account. Here we see that highly educated employed women have independent bank account as compared to others.

In teachers category the responses for yes counts as 63% and 6% for no responses. In lawyers category the reply for yes represents as 74% and 8% represents for no replies. In office employees category the answer for yes counts as 60% and 20% for no answer. In the housewives category the responses for yes counts as 39% and for no counts as 29%. In last category of home based workers responses are insignificant due to their poor economic level.

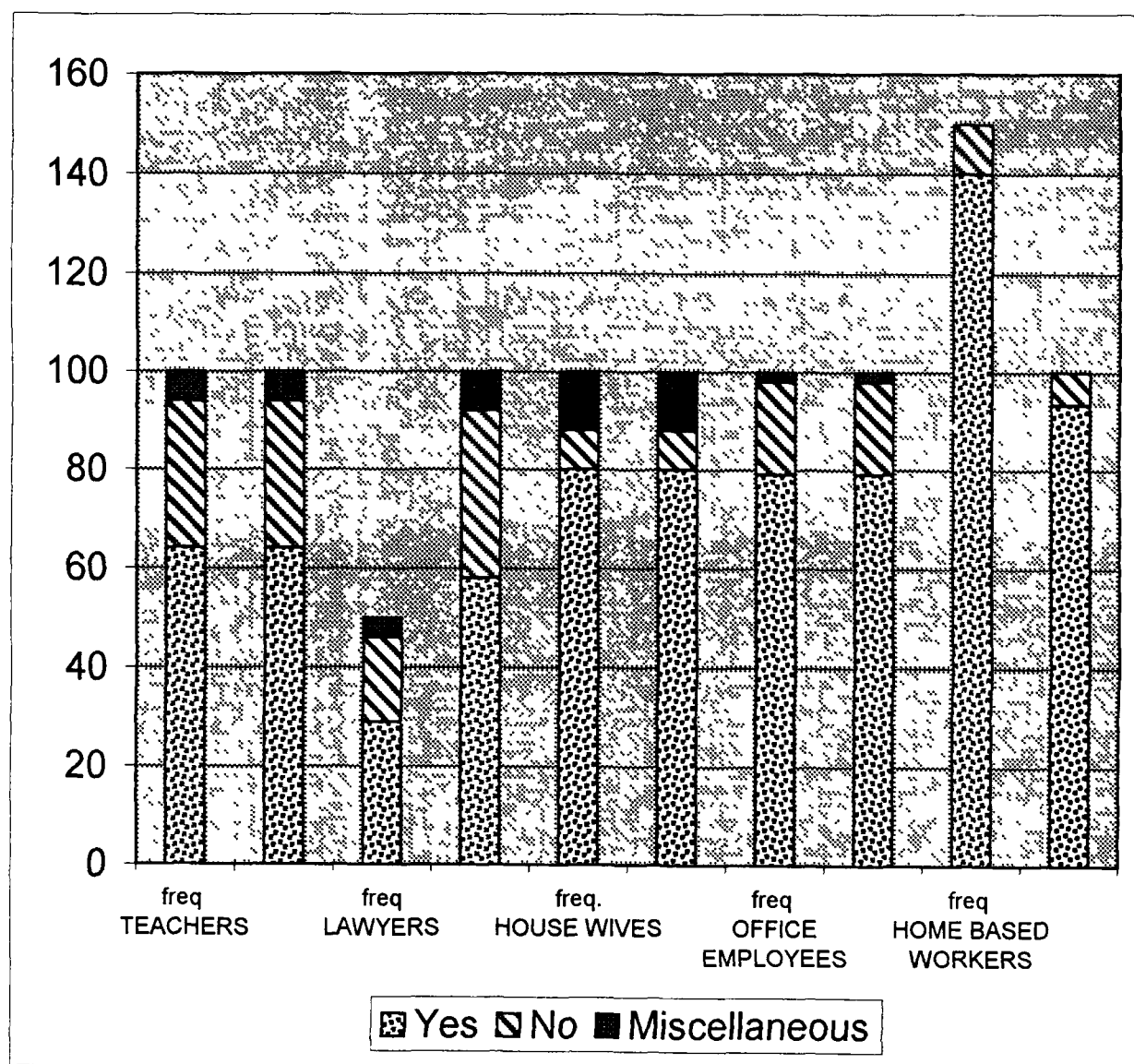
Under table 9.20, we try to represent overall family income level when both husband and wife are earning. In teachers and office employees classes the frequency indicates high level of income counts as 36% and 80% and they counts medium level as 47% and 12%. But in lawyers class the level of income comes under medium level first as 74%. Secondly, high level counts as 24%. Under housewives class medium and low levels comes first. Lastly in last category i.e. home based workers have very low level of income.

There is general notion that high literacy rate increases women's awareness and thereby enhances their aspiration towards change reform reforms, and for the enactment of new legislation to

TABLE 9.21

INHERITANCE RIGHT IN FATHER'S PROPERTY

ITEM NO	INHERITANCE IN FATHER'S PROPERTY	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	64	64	29	58	80	80	79	79	140	93.33
2	No	30	30	17	34	8	8	19	19	10	6.67
3	Miscellaneous	6	6	4	8	12	12	2	2	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



curb. The high frequency of the women have holding two bank accounts independent and as well as joint indicates the fact that these women assert their right over the money earned by them and also over that of their husbands. Maintenance of two bank accounts, joint and independent is one of the way by which they establish their authority in their dual role of wife and not only women.

Thus, it has been found that in majority of the cases it is the woman who has the upper hand in family finances though many times pressurise by their husbands

Table 9.21, show the frequency about daughters also had the right to share in his fathers property. In this table majority of the responses goes in favour of yes. In teachers category the responses of yes counts as 64% and for no responses counts as 30%. In lawyers category the responses of yes counts as 58% and for no responses counts as 34%. In office employees class the reply for yes emerges as 79% and reply for no emerges as 19%. In housewives and home based workers category the reply for yes responses counts as 80% ad 93.3% and responses for no counts as 8% and 6.6%.

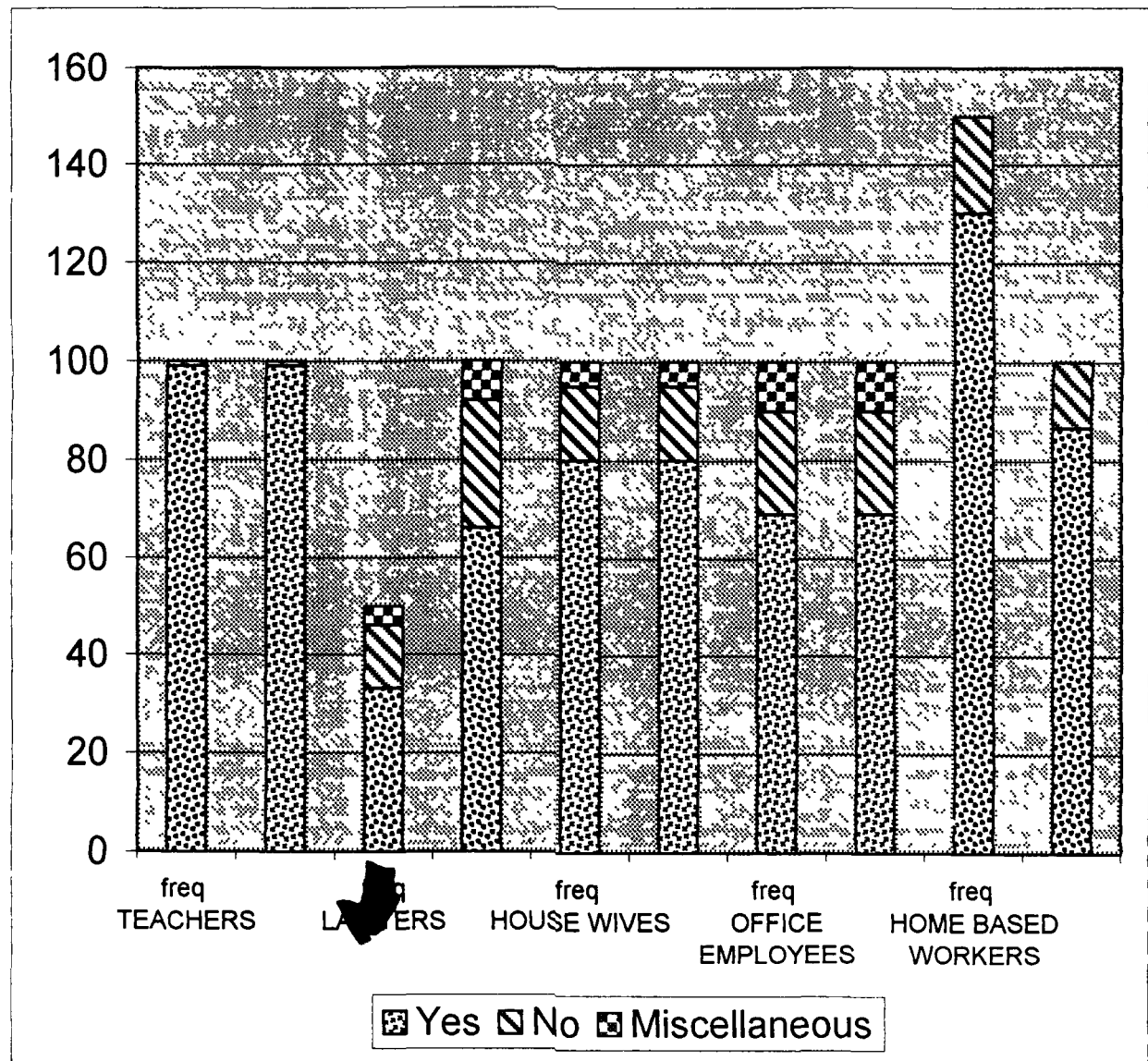
Discussion

Under Islamic rules the women are entitled to a share in their father's property and she has knowledge about it but in practice usually women deprived of it on the pretext that money had been spent on their wedding. None of the women in practice

TABLE 9.22

ENACTMENT OF THE MUSLIM MATRIMONIAL CODE IN FUTURE

ITEM NO	MUSLIM CODE	TEACHERS		LAWYERS		HOUSE WIVE		OFFICE EMPLOYEES		HOME BASED WORKERS	
		freq.	%age	freq.	%age	freq.	%age	freq.	%age	freq.	%age
1	Yes	99	99	33	66	80	80	69	69	130	86.67
2	No	1	1	13	26	15	15	21	21	20	13.33
3	Miscellaneous	0	0	4	8	5	5	10	10	0	0
	TOTAL	100	100	50	100	100	100	100	100	150	100



wanted to claim her share from the brother mainly to avoid tension and unpleasantness in the family.

The last table 9.22 shows deep concern about the enactment of Muslim Matrimonial code in future. The frequency for the enactment of Muslim matrimonial code is almost very high among all the respondents irrespective of their educational, economical, social background. In the category of teachers the frequency for yes counts as 99% and only 1% those opposed for it. In lawyers class the responses for yes emerges as 66% and 26% for the responses no. In office employees class the reply comes as 69% for yes and for no 21%. Similarly in house wives and home based workers class the responses for yes indicates as 80% and 86.6% and for the no responses indicates as 15% and 13.3%.

The aspiration towards the enactment of Muslim matrimonial code is very high amongst all the respondents in the entire district. The frequency about enactment of code further check our hypotheses and proved its need for the enforcement of this code for future generation.

.Conclusion

In the findings of data shows that the women, surveyed and interviewed so far, whole heartedly support the cause of education and opine that the formal education is another necessity of life as well as we should have religious and legal knowledge about their

rights. After getting desired findings under this study, we have know the attitude of women regarding the usefulness of education, shows the fact regarding aspirational pattern of the women. In any culture the aspirational pattern is a significant feature reflecting the desired goal of its people. Besides, a comparison between the aspired status and achieved status would indicate the drawbacks and the factors resisting change in the society. The aspiration of women are varied and different.

In Muslim society, marriage is regarded as the ultimate destiny of the woman on which rests her security and culture. Education and employment are aimed of making eligible brides. Then, the change in attitude of the man in respect of the desirable quality of a girl in the marriage affects not only the girl but also her parents, particularly father who is responsible for marriage. He should not waive her daughters right to choice and must take consent during negotiations and so follow the true teachings of Quran and hadith. As per the findings of the data women want total participation in every spheres of life. All the women wanted to enact Muslim matrimonial code in future. But women generally not aware with the socio-legal rights enshrined in Quran and under various legislation. There is sheer need to resolve feministic issues in light of Shariah. Mostly women under the findings of the data are not satisfied with role of the Indian judiciary while interpreting various issues.

Marriage is another area when changes becomes most evident. Amongst the Muslims, the marriage rules in theory are mainly intended to safeguard the interests of women, but in practice, the women gets neither mahr nor can she refuse to marry and not to initiate for divorce. But amongst the young women of today who have modern education, and earnings capability, mahr becomes an added economic asset. Being educated, they have also the advantage of understanding the Islamic jural and legal rules. To understand the full importance of her right to choice, consent and mahr and unlike their uneducated sisters do not free their husbands of the mahr money out of emotion. Comparatively, uneducated woman are losers and have an insecure standing in their married life.

Though the Muslim marriage in a contract, yet this institution is viewed by them as something having greater significance. This is true specially for the women, who believe that the entire fulfilment of life would be attained through marriage. Thus, what is to for better results she should equally participate with their parents in her marriage negotiations.

Thus we can conclude that society being patrilineal and male oriented, the change in the role of women comes largely when it is initiated by the males.

2. INTELLECTUAL'S REACTIONS:

1. Opinion of the Qazi of the district of Aligarh

In the entire district of Aligarh some 5000 marriages were solemnised every year. In most of the cases the consent of the girl was not sought at the time of engagement and consequently differences developed between the partners culminating into demand of divorce from the side of the wife for such incident the Qazi gives a figure of 80% where the wife initiated the divorce process in the court of law. The Qazi strongly feels the need of compulsory registration of all marriages. Furthermore, the brides should be informed of the contents of the nikah-nama and should also have the right to stipulate reasonable conditions under the nikah nama.

In the matter of reforms in the Muslim Personal law, the Qazi expressed his agreement for such reforms but such reforms must address the vital issues of maintenance, mahr, divorce etc., in accordance with Quran and hadith.

2. Prof. Naseem Mansoor, Chairman, Department of Theology, Aligarh Muslim University, Aligahr: Views.

She says that there is an urgent need to enact a Muslim matrimonial code. She emphasised the importance of girl's consent at the time of marriage negotiations. She expressed her concern on the way Muslims organise their marriages which are no more the traditional mode of simple marriage rather they, too, have started show off at such marriages spending huge amount of money and

demanding huge amount in the form of dowry which are against the tradition of Islamic Sharish. According to her, serious efforts should be made to arrest such evils from further growth. She also agreed about the compulsory registration of marriage. She also agreed to the opinion that the girl should have the right to know the contents of the nikah nama. While expressing her views on the issue of reforms in the Muslim Personal law she said that there is a need for reforms but such reforms should be in accordance with the Shariah.

3. Maulana Ali Ahmad Siwani, Poet and Religious Orater, Aligarh

According to him, Islam gives due respect and status to women in the society. The consent of girl at the time of marriage negotiations is important and it should be sought so that in the post marriage no differences arise between wife and husband. The Muslim should refrain from show off at a time of marriage and should organise the marriage in accordance with Islamic traditions and Shariah. The evil of dowry should be checked urgently to safe Muslim society from further decay. The woman has a right to know the content of nikah nama and can also include her conditions.

4. Mrs. Roohi Zuberi, a social worker and convener of All India Mahila Congress; President, Women's Welfare Society, Aligarh.

She is of the opinion that there is a need of enacting a Muslim matrimonial code in future and also of reformation in Muslim Personal law with in the spirit of Shariah. She further added that consent of girl is very important at the time of marriage negotiations and it is the responsibility of the parents of the girl to seek her consent while finalizing her marriage.

5. Mrs. Nikhat Saeed, Reader, Deptt. of Geography, Aligarh Muslim University, Aligarh.

She highlights the importance of consent of girl at the marriage negotiation and she is in favour of enacting a Muslim matrimonial Code.

6. Dr. Anjuman Ara, Member of the Muslim Personal Law Board.

According to her the Muslim Personal law board is a representative body of Indian Muslims. Its aim is to create the religious awareness among Muslims following the laws of Shariah. She says it is a very effective body and has been able to solve series of problems of Muslims and has taken many bold steps in the past against arbitrary decisions of Indian government. It has been successful in safeguarding Shariah law. In its goal and objective Muslim Personal law board has made great achievement.

Dr. Anjum Ara further says "I only want to suggest that the Muslim Personal law board should increase the memberships of Muslim women and youths in order to make it more effective body". She further says that Muslim Personal law board should be more attentive towards reformation of Muslim society and should check anti-Islamic traditions and rituals fast spreading in Muslim community. For the realisation of such objective Muslim Personal law board should establish Shariah courts in different cities of India. The Indian Muslims should also come forward to operate Muslim Personal law board.

7. Mrs. Naghma Irfan, Teacher in 10+2 (Girls section), Aligarh Muslim University, Aligarh.

She also emphasised the importance of consent and right to choose her life partner. She felt the need to enact a Muslim matrimonial code. On the matter of reforms she did not make any comment.

Dr. Sauood Qasmi, Nazaim Diniyat, Aligarh Muslim University, Aligarh and also Member of Muslim Personal Law Board.

He refers to several hadith and Quranic verses highlighting overall social status of women given by Allah. On rests of the issues Dr. Saud did not like to express his opinion.

9. Mrs. Anees Fatima, Retd. P.G.T. Teacher, (Girls sections) Aligarh Muslim University, Aligarh.

According to her, consent of women at the time of marriage contract is essential. She is of the opinion that triple talaq should be totally abolished. She also favoured the enactment of Muslim matrimonial code in near future.

10. Mrs. Hina Mirza, Lecturer, Women's College, Aligarh Muslim University, Aligarh.

She affirms that Muslim women has a right to choice during marriage negotiations under Islam. According to her consent is an important part of marriage age. Like others she also felt the need to enact the Muslim matrimonial code in accordance with the need of the society. On the matter of reformation in Muslim Personal law she did not feel any need for this.

11. According to Mrs. Rehana Khan, Teacher, Government School, Aligarh

She says that there is no need to introduce any change or any modification in Muslim Personal law. But she felt the need to enact a Muslim Personal matrimonial code.

12. According to Dr. Qaiser Jahan, Chief Medical Officer, Atrauli, District Aligarh.

She is in favour of changes or modifications in Muslim Personal law. According to her, girl consent is an important part of marriage. She also affirms a need for Muslim Personal matrimonial code in future to solve Muslim women problems.

Chapter - VI

**MUSLIM MARRIAGE NEGOTIATION IN
INDIA : A JUDICIAL INTERPRETATION**

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Chapter - VI

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Chapter-VI

MUSLIM MARRIAGE NEGOTIATIONS IN INDIA : A JUDICIAL INTERPRETATION

Introduction :

This chapter highlighted some trend setting judicial pronouncements under Muslim law. For the growth of Islamic Jurisprudence there is sheer need to evaluate the contribution made by judiciary through leading cases and ascertain deeply its ratio decidendi and obiter dicta.

The object of this study is arowedly an attempt to estimate how far the interpretations in India have enhance the application of Islamic principles and to determine the extent of deviations introduced by them in the law which is applicable to Muslims in India. The decision of Justice Mahmood is taken as starting point of this enquiry because of its profound effect on the decisional law relating to matrimonial relations among Muslim in the India.

Juristically, speaking marriage is a contract and not a sacrament. The judgement given by Justice Mahmood, the first Indian judge of the Allahabad high court in Abdul Qadir Vs Salima¹. This case is one of the important case in which the institution of marriage which constitutes the foundation of personal, family and community relations, is the backbone of social system in a Islamic society. This case from the classical pronouncements which has acquired so great reputation that even into obiter dicta carries the legal sanctity of ratio

decidendi. Justice Mahmood's observations on the nature of marriage has won universal recognition not only of various high courts but also of the Privy council and the Supreme Court.²

The two legal luminaries, Syed Mahmood and Sulaiman C.J. had very close connections with the Aligarh Muslim University and Mohammadan Anglo Oriental College³ hereafter to be mentioned as M.A.O. College, Aligarh. The former had the honour of being the son of Sir Syed, and co-architect and co-founder of M.A.O College, along with his father. Later on he also served as an honorary secretary of the Board of Trustees of the College. Then latter served Aligarh Muslim University in the capacity of Vice-Chancellor. Further, the former, because of his legal brilliance,⁴ served the bench of Allahabad high court as the first Indian Judge, whereas the latter graced the bench as the first Indian Chief Justice of the same high court.⁵ The divergence of opinion with regard to the nature of Muslim marriage and dower debt, between the two legal giants relates to the time when they delivered their judgements as judges of Allahabad high court.

The object of this study is to discuss and this case ascertain the validity of observations made by J. Mahmood in the case of Abdul Qadir v. Salima⁶, in the light of the review of the said case, by Sulaiman C.J. in Anis Begam v. Mohammad Istafa Wali Khan.⁷ These relate to the following issues :

- (i) Nature of Muslim Marriages,
- (ii) Nature of Dower Debt, and
- (iii) The analogy of marriage contract with the contract of sales of goods.

1. DIVERGENCE OF OPINION BY JURISTS

Whether marriage in Muslims is a Civil Contract or Sacrament.

Mahmood J. in Abdul Qadir Vs Salima⁸ adopted the opinion of Jaduy Nath Sarkar in "Tagore Law Lectures" (1873) and quoted as follows :

"Marriage among Mohammadans is not a sacrament but purely a Civil Contract, and though it is solemnised generally with recitation of certain verses from the Quran, yet the Mohammadan law does not positively prescribe any service peculiar to the occasion",⁹

Sulaiman C.J. while reviewing the case of Abdul Qadir Vs Salima¹⁰, in the case of Anis Begam Vs Mohammad Istafa Wali Khan¹¹ observed :

"It may not be out of place to mention that Maulvi Samiullah collected some authorities showing that marriage is not regarded as a mere civil contract but as a religious sacrament."¹²

Though the learned Chief Justice does not himself say that marriage is a sacrament, but from the context in which he said, it is clear that he supported the view of Maulvi Samiullah, District Judge, Rae Bareilly. It is difficult to ascertain that view because neither Sulaiman C.J. supports it through arguments nor the opinion of Maulvi Samiullah, in his decision of 1891, is available.

Marriage as Civil Contract :

Mohmood J. supports his view from the text of Kanz, the Kifayah and Inayah which says that "marriage is a contract which has

for its object the right of enjoyment or procreation of children. But it was also instituted for the solace of life and is one of the prime or original necessities of man.... The pillars of marriage, as of other contracts are Ijab-o-Kubool, or declaraton and acceptance.¹³ Apart from this, the learned judge does not put forward any argument in favour of marriage as Civil Contract. In nutshell, his lord ship places his reliance solely on element of offer and acceptance.

It is not disputed that marriage is a contract¹⁴ and to this extent Mahmood J. is correct. The only subject of dispute is whether marriage is purely a civil contract or sacrament¹⁵ also. Sacrament in this context means 'holy order', 'sacred obligation', 'matrimony and extreme unction' and 'solemn oath'.¹⁶ A modest attempt shall be made to examine the true nature of marriage in this chapter with cases analysis.

In order to understand the real nature of marriage, we will have to consider its aims and objects. Besides this, we must also examine as to what are injunctions of Quran, the Sunnah of prophet Mohammad and his preachings in this respect.

2. Aims And Objects Of Muslim Marriage

Muslim law ordaines the institution of marriage for sanctioning thereby sexual relations between members of opposite sexes, for preservation of the human species, the fixing of descent, restraining men from debauchery, the encouragement of chastity, promotion of love, affection and union between the husband and wife and of mutual help in earning livelihood.¹⁷ It aims at perfecting one's desires and sexual urges in a healthy way.

In order to achieve these aims and objects, the Holy Prophet Mohammad says: "Nikah is my Sunnah" (tradition). He directed the faithful to contract marriages in mosques¹⁸ and propagate with others to the same effect, in order to enhance and maintain its sanctity, as the mosques are the most sacred places before the prophet of God. The Holy Quran uses the word "Sacred Covenant" for marriage.¹⁹

The Prophet says :

"O assembly of youths! whoever among you is able to have, he should marry, for it is a restraint to the looks and he who is not able, let him keep fast".²⁰

He also said that when a man marries truly, he perfects half his religion and that "there is no act of worship except marriage and faith, which has continued from the days of Adam and which will continue in paradise as well."²¹

Any person who does not marry for fasting, praying and keeping himself awake in the night has been scolded by prophet thus:

"I keep fast and break it; I pray and I sleep and I am married; so whoever inclines to any other way than my Sunnah, he is not of me."²²

"Nikah is our precept. Those of you who are unmarried are the unworthy amongst you and those who die unmarried are the most unworthy of the dead."²³

In Quran and hadith, spouses are strictly enjoined to love and honour each other. Enjoyment and showering love and affection by each one has been called as a noble act (kare-sawah). Traditions of the Holy prophet (SAW) follow strictly the above lines and are an example for others.

Muhammad Ali says that the contract of marriage is sanctified by a sermon before the parties announce their acceptance. He says: "The khutbah or sermon at marriage helps the publicity of the marriage and serves the double purpose of sanctifying the marriage contract and informing the parties of their responsibilities"²⁴ By a reading of hadith, it is evident that faithful are exhorted to be duty bound and truthful as God is omniscient, omnipotent and omniverent. This creates a sort of feeling in true muslims to observe the sacred marriage tie in its spirit and essence and not to make a mockery of it.

Prophet (SAW) has also recommended the prayer to God, for divine blessings at the first meeting of husband and wife.²⁵

Thus it may be observed that "marriage partakes of the nature of both, of ibadat (worship) and muamalat (wordly affairs).²⁶ It is a contract but it is also a sacred covenant.²⁷

3. Nature of Liability To Pay Dower Debt And Matrimonial Rights Of Parties

In respect of nature of liability to pay dower debt, Sulaiman C.J. differs with Mahmood J. on the following points :

(a) Justice Mahmood's rule of interpretation with regard to the cases where there is difference of opinion between Abu Hanifa and his two disciples.

(b) Justice Mahmood's analogy of marriage as civil contract with contract of sale of goods and the right of the wife to refuse restoration of Conjugal rights with the right of lien and stoppage in transit of an unpaid seller.

4. Rule of interpretation

Mahmood J. observed that although non-payment of prompt dower by husband may be pleaded as a defence in a suit for restitution of conjugal rights the husband's right to claim cohabitation is antecedent to the plea, and it cannot be said that until he has paid prompt dower, his right to cohabitation does not arise. He further observes that after consummation of marriage, non payment of prompt dower cannot be pleaded as defence from the wife in an action for restitution of conjugal rights by the husband.²⁸ To support his view he cites certain authorities and concludes :

"I take it as a general rule of interpreting that law, that whenever there is difference of opinion, the opinion of the two" (out of three masters, namely Imam Abu Hanifa and his two disciples)" will prevail against the opinion of the third.²⁹

Similar observations were made by Mahmood J. in *Agha Ali Khan Vs Altaf Hasan Khan*.³⁰ Sulaiman C.J. remarks that the opinion of Mahmood J. is erroneous and does not find support from various

text-book authorities. The authorities which were produced before Mahmood J. are silent on the point as to which view should be preferred, in case of difference of opinion among the three masters.

As per Sulaiman C.J. ordinarily in cases of difference of opinion, the majority opinion of three masters prevailed. But in cases of rituals, the opinion of Imam Abu Hanifa, in cases of wordly affairs the opinion of Imam Yusuf and in matters of inheritance, the opinion of Imam Mohammad prevails over the other two.³¹ In support of his view he quotes Ameer Ali Sir Abdul Rahim.³²

The case of Abdul Qadir v. Salim has been reviewed by Oudh Judicial commissioner's court in the case of Wajid Ali Khan Vs Shakhawat Ali Khan³³ and in the light of text of Hedaya, Durr-ul Mukhtar, Fatwa-i-Kazi Khan, Fatwa Hamadiyah, Fatwa-i-Mufti, Tahzib, Tanvirul Absar, Wikayat-ur-Rivayah, Ranz-ud Dakaik and Fatwa-i-Alamgiri, the following propositions were deduced :

(1) In the absence of sexual intercourse between husband and wife, the wife may refuse cohabitation till her prompt dower is paid,

(2) in case of consummation, she has right to refuse her person according to Imam Abu Hanifa, but not according to his two disciples, and

(3) Majority of Mohammadan Jurists has accepted the view of Imam Abu Hanifa in matters relating to non-payment of prompt dower.³⁴

We, therefore, conclude, with due regards to the great legal luminary, that the rule of interpretation adopted by Mahmood J. was based upon an erroneous notion that majority opinion always prevails, which though generally correct is not of universal nature. That is why Sulaiman C.J. in *Anis Begum Vs Istafa Wali Khan*³⁵ has criticised the opinion of Mahmood J. in *Abdul Qadir Vs Salima*,³⁶ but felt compelled, under the rule of stare decisis,³⁵ to follow the full bench decision in that case.

5. Analogy Of Contract Of Marriage With Contract Of Sale Of Goods

Mahmood J. observed :

"Her right to resist her husband, so long as the dower remains unpaid is analogous to the lien of a vendor upon the sold goods, while they remain in his possession and so long as the price or any part of it is unpaid, and her surrender to her husband resembles the delivery of the goods to the vendee.³⁸ The same is the principle, upon which, in the law of sale, the right of stoppage in transit is based.³⁹

Being provoked by such analogy Sulaiman C.J. remarked that "marriage cannot be regarded as purely a sale of the person by the wife in consideration for the payment of the dower and even if such a grotesque were to be carried to its fullest extent, it would not necessarily result in support of the observation made in Abdul Qadir's case."⁴⁰

Now the question is whether, Mahmood J. compared the contract of marriage resembling with sale of goods in every respect or only to the right of lien, and stoppage in transit of an unpaid seller. If he confined his analogy of marriage-contract only to the right to unpaid seller of goods, the following consequences will follow :

(1) The contract of sale of goods may be cancelled by an unpaid seller. He may resell the goods by rescinding such contract; whereas, in a contract of marriage, the wife is not entitled to divorce her husband or remarry with a third person, if a part of her dower remains unpaid.

(2) The right of stoppage of goods in transit is exercised only when the goods have parted the possession of the seller and they are in the possession of a carrier or other bailee for the purpose of transmission to the buyer. This right accrues to the unpaid seller only when the goods have parted his possession, but have not yet reached to the buyer, and in the meanwhile, before receiving them, he becomes insolvent. By no stretch of imagination, this analogy can be applied to a lady who refuses to restore her conjugal rights of her husband, till her prompt dower is paid. Further, in this case, there is no delivery to carrier or other bailee.

(3) If we apply the analogy of lien, then it revives when possession is regained. Hence, after the wife left the house of her husband, she could demand payment of her dower.

(4) Justice Mahmood said that once consummation has taken place, her right to refuse cohabitation is gone, because it amounts to

delivery or transfer of possession by the wife to her husband. The author of *Rudd-ul-Mukhtar* while differentiating between contract of marriage and sale of goods, says that the fundamental difference between both is that in the former there are a series of transfer of possessions, as sexual enjoyment is a life long affair; whereas in the latter one transfer of possession is sufficient.⁴¹ Here also Mahmood J's analogy of lien falls short of argument.

Now if Mahmood J. stretched the analogy of marriage-contract to the sale of goods in every respect the following consequences, apart from the above, will follow :

(1) There are buyers and sellers in a contract of sale and the subject matter of sale are goods; whereas, in a contract of marriage, the wife herself is to receive dower and not her parents. This notion brings nearer to the fact that a lady is treated as a chattel.

In pre-islamic era, a woman was treated as a mere chattel. The dower was treated as price for the bride and she was an object of inheritance, after the death of her husband. But Prophet Mohammad (SAW) reformed the society and conferred a higher status to ladies than any other religion.⁴²

(2) The analogy leads to the conclusion that dower is a consideration for marriage, which is incorrect and contradicts the statement of Mahmood J. himself.⁴³ The various authorities are unanimous on the point that dower is a mark of respect.⁴⁴

CONCLUSION

It will be observed that (1) a muslim marriage is unique combination of civil contract and sacrament,(2) the analogy of contract of sale of goods with that of marriage contract is not a very happy one and (3) the rule of interpretation that in cases of difference of opinion among the three masters, the majority opinion prevails is not of general application without exceptions.⁴⁵

Though in the Muslim communities certain social functions and ceremonial rites are performed at the time of marriage, such functions or rites are not legally necessary. The solemnisation of marriage requires adherence to certain forms and formulas. They are called the essentials of valid marriage. In short these essentials are :

- 1) Proposal and acceptance
- 2) Competent parties
- 3) No legal disability

According to Muslim law it is absolutely necessary that the man and the woman should agree to the marriage at one meeting and the agreement should be witnessed by two adult witnesses. As women is in pardah, it is customary to send her relation to the woman to her inside the home accompanied by two witnesses. The relation ask the girl within the hearing of witnesses whether she authorize him to agree to marriage on her behalf for the dower money offered by the husband. He explains to her the detail of the dower proposed. When the girl says yes or signifies her consent by some other method, the three persons come out. The future husband and those three persons

are then placed before the Qazi. Qazi asks the boy whether he offer to marry the girl on payment of these specified dower. He says yes then the relation, who had gone inside, tells the Qazi that he is agent of the girl. Qazi asks him whether he agrees to the marriage on payment of specified dower. The relation says yes. When both the sides says yes, Qazi reads some portion of Quran and in this way marriage is complete.⁴⁶

6. Ceremonies in Marriage :

In some societies, there is betrothal between a man and a girl before marriage followed sometimes by sexual intercourse. This is completely unsatisfactory method of selection of males. It is free love in the garb of wooing. On the other hand, there are practices in some societies just opposite. Islam took middle way. It allow a man or girl to select his or her partner after sights and glances and not beyond that. From the basis of several traditions discussed earlier we can say that the parties are completely free to have a glance at each other from marriage point of view.⁴⁷

In *Rainaba Vs Abdul Rahman*⁴⁸. It was held that Betrothal is not know to system of marriage under Muslim Law.

Similarly in *Maunj Kyi Vs Shwa*⁴⁹ held that there is no formalities by way of religions ceremonies or writing are at all necessary.

In *Abdul Nabi Vs Syed Azmat Hussain*.⁵⁰ Only one ceremoy that is Nikah is known to Mohammedan Law for unity a husband and wife. In *Mst Ghulam Kubra Vs Mohd. Shafi*⁵¹ further say that no

religious ceremonies are required under Muslim law but some formalities are however, usually performed in marriage under Mohammedan Law.

7. Capacity For Marriage :

The parties to marriage must have capacity of entering into a contract. In other words, they must be competent to marry. Muslim who is of sound mind and who has attained puberty may enter into a contract of marriage. The parties must be able to understand the nature of their act. A marriage contract by lunatic is void except when it is contracted in lucid intervals. However, lunatics can be contracted in marriage by their respective guardians. Same case in the minor's marriage.

In *Munshi Vs Alam Bibi*⁵², every Mohammadan woman who had attained puberty even though she is under fifteen years of age can go for marriage freely.

8. Free Will And Consent :

The parties contracting a marriage must be acting under their free will and consent. The consent should be without fear or undue influence or fraud. In the case of boy or girl who has not attained the age of puberty, the marriage is not valid unless legal guardians consented to it. The consent may be express or implied. In *Hasan Kulfi Vs Jounga*,⁵³ free consent in case of adult person is not only essential for a valid marriage but is absolutely necessary. In *Sayed Mohiuddin Vs Khadija*⁵⁴ in this case marriage solemnised with Shafei girl, who

had attained puberty was performed by her father against her consent, the court held that the marriage was void. In *Abdul Latif Vs. Niyaz Ahmad*.⁵⁵ A marriage brought about by a fraudulent misrepresentation is invalid unless ratified, where consent to the marriage has not been obtained, consummation against the will of women will not validate the marriage.

In *Naffis-un-Nissa Vs Mirza Mumtaz*⁵⁶ marriage contracted by woman after attaining puberty, her consent is only important for the marriage and no other person's consent or advice is necessary.

In *Munshi Vs Alam Bibi*⁵⁷ every Mohammedan woman who has attained puberty even though she is under fifteen years of age is free to marry.

According to Hanafi Law, contracts of marriage even under compulsion or after and the acceptance even if pronounced without any intention to effect a marriage, are valid. This peculiar rule of Hanafi law is based upon the following tradition: "Apostle of God said!"there are three things which whether done in joke or earnest, shall be considered as series and effectual. One marriage, second divorce and third the taking back". The other three schools of Sunni law and Shia school holds a contrary opinion. According to these schools, marriage under compulsion is not valid.

In *Sibi Ahmad Vs Amina Khatoon*⁵⁸ marriage solemnised by a girl must be with her free consent. A marriage without the consent of the parties is not valid.

In *Mahbooban Bibi Vs Md. Ammeruddin*⁵⁹, If marriage solemnised on the basis of illegal conditions it will become void.

In *Kunnath Adrm Vs Janab R.P. Mammad*⁶⁰. In this case marriage solemnised by the parties on the basis of their marriage agreement with their own conditions.

In *Szechter Vs Szechter*⁶¹, when consent of a party to solmnization of marriage is obtained by force or as it is sometimes said by coercion or duress, it is obvious that there is absence of consent. In a recent decision in England it was observed that in order for the impediment of duress to vitiate otherwise valid marriage it must be proved that the will of one of the parties hitherto has been overborne by genuine and reasonably held fear caused by threat or immediated danger, for which the party itself is not responsible, to life, limb or liberty. So that the constraint destroys the reality of consent to ordinary wedlock.

9. Law Relating To Option Of Puberty Prior To Act, 1939 :

According to traditional MUSLIM Law if a minor has been given in marriage by the father or father's father, the marriage is binding and valid. The minor has no right to repudiate the marriage in attaining puberty unless it could be shown that the father or father's father has acted negligently or fraudulently⁶², However, if the minor was given in marriage by any other guardian, he or she has a right to repudiate the marriage on attaining puberty. The option of repudiating

the marriage could be exercised immediately on attaining puberty and secondly, the marriage should not have been consummated. The option of puberty is lost by delay and by consummation of marriage.⁶³

The courts by liberating this branch of Muslim law have applied this law in favour of Muslim females by involving rules of equity and justice⁶⁴. In *Aziz Bano Vs Mohammad*⁶⁵, a Shia girl has given in marriage by her father to a Sunni husband during minority was allowed to repudiate the marriage as it was contrary to all rules of equity and justice to force a marriage on her, which right be repugnant to her religious sentiments. As discussed earlier Islam provide right to choice in the hands of girl and her consent is considered to be an important pillar under marriage contract. The court made considerable relaxation in respect of the time during which option to repudiate the marriage could be exercised. It was held by Allahabad high court that a wife could exercise the option only after she had known that she had such a right.⁶⁶ The Patna high court took the same view in *Mst. Ayesha Vs. Muhammad Yusuf*⁶⁷. It was held by the court that a minor wife did not lose her right to repudiate the marriage within a reasonable time after she became aware of her rights. These decisions are not entirely in consonance with the teachings of Abu Hanifa and Abu Yusuf, according to whom a woman would be her option of puberty even if she is unaware of the right, unless she exercise it immediately on becoming major. However, there decisions confirm the opinion of Imam Muhammad, the disciple of Abu Hanifa. According to him, the right will be exercised only when the wife is acquainted with the fact that she has the right. Therefore,

in the above cases, the hardships caused by the Hanafi principle that option of puberty should be exercised immediately that delay would be fatal has been considerably mitigated by the courts. In *Kanoo Vs. Bhag Bhuri and Hussain Vs. Jivani*⁶⁸, delay was allowed in the exercise of option of puberty even on the ground of non acquiescence. With regard to the consummation of the marriage, it has been held in *Abdul Karim Vs Amina bai*⁶⁹, that mere consummation is not sufficient but it must take place with the consent of the wife was that it can put an end to right to option of puberty.

10. Law Relating To Option Of Puberty After The Act, 1939 :

The Muslim law relating to option wholly unchanged and its application to the males but the right of females to option of puberty was largely modified by the Dissolution of Muslim Marriage Act, 1939,⁷⁰ According to this Act, a Muslim girl can seek a decree for the dissolution of her marriage on the ground, inter alia that she, having been given in Marriage by her father or her guardian before she can attained the age of fifteen years, repudiated the marriage has not been consummated⁷¹. The Act has done away with the traditional principle that a minor's marriage contracted by the father or father's father could not be repudiated. The interpretation of this provision has led to the conflicting opinions among the high courts on various points such as whether a court's decree is essential to sever the marriage tie, about the time within which the option could be exercised, the period during which marriage has been consummated, and whether such option could be exercised in the same suit in which the husband

sued for restitution of conjugal rights. The Dissolution of Muslim Marriage Act, 1939 is based on the experiences of the working of the Islamic principles of 'option of puberty' in India. The behaviour pattern of man and woman generally provides the basis and legitimacy to the provisions of the Act. A long time of judicial decisions shows that the males adopted and often successfully defeated thereby stratagem of an almost infinite variety which produced various difficulties in the realization of the goal of Shariah. various human judgements in the form of conflicting judicial decisions edicts of the ulema and the views of commentators constituted their right and mainly in stretching and straining and after distorting the principles of Shariah to satisfy their own vain desire. The fact that society was and is male dominated further placed almost unsurmountable difficulties in the way of enforcement of the true Islamic principles through the judicial process. Unfortunately, the weak position of women and various social disabilities provided a easy hunting ground to the male maunders. The legislature had no option except that it may either silently watched the mutilation and destruction of true Islamic law or by human wisdom plucked the loophole of the human procedure for the enforcement of the true Islamic law.⁷²

The changed introduced in fact in reality and in truth do not constitute a change of Islamic principles but only reflect a change in the behaviour of the so-called believers, which essentially required correction through procedural changes. It is submitted with all humility that the critics of this legislative measures are absolutely of the mark when they consider such attempts as a change of Islamic principles.⁷³

The Dissolution of Muslim Marriage, Act, 1939 introduces the procedural changes and it may be stated here that any legislative measure which does not effect the case core element or the basic principle of Shariah and make changes in enforcement process only to achieve the Islamic objective, is not only permissible under Islamic law but in fact constitute a landable endeavour of human intellect and the coercive force which the state possesses.⁷⁴

In the light of away, the dissolution of Muslim Marriage Act, 1939, may be analysed and evaluated and the same is attempted in humable way in respect of option of poverty.

In the light of the above, the Dissolution of Muslim Marriage Act, 1939, may be analysed and evaluated and the same is attempted in humble way in respect of the 'option of puberty':

- a) that she was given in marriage by her father or other guardian'
- b) that the marriage took place before she attained the age of 15 years;
- c) that she repudiated the marriage before she attained the age of 18 years; and
- d) that the marriage had not been consummated.

A male can also exercise the right of 'option of puberty' on traditional footing and the Dissolution of Muslim Marriage Act, 1939 does not provide any specific remedy regarding the exercise of the 'option of puberty'.

The normative rule operational in this area is that a marriage bond in the natural and approved manner can only be created by free

mutual consent of the parties. No method, howsoever necessary, can exclusively and legally replace the mode indicated in the text of the Message. The Teaching clearly makes it obligatory that no departures are permitted from this Ordained course except in case of necessity and that too only till such time that the necessity continue. The offshoot of this exception is the rule of *Khiyar-ul-bulugh* which must for its legality conform to the normative principles state earlier. This, in fact, is the root of the option of the repudiating marriage on the attainment of puberty (necessity) whereby the presumption is that the physical and mental development at the stated reaches a point where it is capable of ensuring the capacity to make a decision to express assent or dissent according to one's own free will. Thus, the normative rule suspended for a time being because of the principle of necessity re-emerges and its observance and thereafter is obligatory or binding in action.⁷⁵

Human frailties and a love of three false-god-power, including political power, wealth and unjust desires (selfish desires) have since long been a bane of the behavioural-pattern of humans. This results into the employment of infinite variety of stratagem to distort, stretch and strain the Divine rules of conduct for the satisfaction of the ends which are actually forbidden.⁷⁶ This is the *raison detre* of the establishment of agencies which provide the coercive force to keep the followers of a system within the limits of spheres of activity delimited by laws (in case of Muslim the Islamic law). The changed social, economic and political conditions in a community definitely produced a particular pattern of inter-action and

the ways for the enforcement of the law are necessarily conditioned by such norm behaviour-pattern so as to realize the goal of the normative rule. Two course in such a situation are open to those who are charged with the obligation of keeping the components of a society within the limits laid down by the accepted postulates. One course is to modify the *basic tenets* to accommodate the wishes of the components involved and the second is to keep norms intact and devise ways and means to circumbent the tactical designs used to defeat the legal effect of the Fundamental Principles. The second course is most suitable, hence legitimate. It does not disturb the norm, behaviour, inter-working and also makes the observance the real as distinguished from a mere illusion.

This is what has been done at the instance of the well-meanings from among the believers who were pained to realize that the verses of the Quran were mocked in fact by the transgressors, by the legislature through the enactment of the Dissolution of Muslim Marriage Act, 1939, and nothing more. It was a very fortunate development in as much as the transgressors were effectively checked in perpetuating their mis-deeds without bringing the change in the foundational principles of Islam.

The principle of 'option of puberty' as laid down by the Dissolution of Muslim Marriage Act, 1939, has been a subject of judicial controversy.

One of the controversial aspects is whether the act recognises the girl's right of repudiation in all cases irrespective of

who the guardian was or it spares the traditional distinction between marriages performed by father or father's father and those performed by other guardians. On this point the following judicial opinions are pertinent:

1. The Lahore high court has held⁷⁷ that the distinction was abolished by the Act for all purposes and a girl given in marriage (before attaining the age of 15 years), whether by father or father's father or by any other guardian, could repudiate the marriage in view of the Act.
2. The Calcutta high court in *Sahib Ali Biswas Vs Jinnatan Nahar*⁷⁸ has opined on contrary footing holding that the provision of Dissolution of Muslim Marriage Act, 1939 has a limited scope and its rule cannot alter the law of the 'option of puberty' except for its own purpose.

Another controversial aspect of the law relating to 'option of puberty' under the Dissolution of Muslim Marriage Act, 1939 is: whether it is necessary that the exercise of this right must be followed by the decree of dissolution of marriage under the said Act, on this point the noted judicial view point⁷⁹ is as follows :

The Calcutta high court has expressed the view that the exercise of the 'option of puberty' can be pleaded by a girl even after the enforcement of the Act of 1939 as a defence in the husband's suit for restitution of conjugal rights provided it fully conforms to the classical law on the subject⁸⁰. In earlier case the Calcutta high court has held that exercise of 'option of puberty' made with conformity

with the traditional law could be confirmed by the court merely on an application in that behalf, a suit not being necessary.⁸¹

The Madhya Pradesh High Court in *Nizam Uddin Vs Huseni*,⁸² held that in answer to the suit for restitution of conjugal rights by her husband she is entitled to plead for the 'option of puberty'. Regarding the question whether a wife could successfully resist the suit of the husband for restitution of conjugal rights by repudiating the marriage tie in such a suit on the basis of 'option of puberty', the Calcutta high court⁸³ held that a substantive suit by the wife to exercise the 'option of puberty' under the Act must be instituted.

A plain reading of the Act of 1939 does make it abundantly clear it is mandatory to obtain a decree from the court of law. There is, however, difference of opinion in this regard too while one side of opinion asserts that the mere exercise of option to repudiate the marriage does not serve the marital tie subsists,⁸⁴ others are not so sure and merely say that it is not clear whether an order of the court is necessarily needed.⁸⁵ However, the Calcutta high court held that no decree is required to confirm the repudiation and an order of the Judge is necessary 'to impress on the act a judicial imprimatur' The Madhya Pradesh high court favoured this view.⁸⁶

11. Judicial Attitude :

The analysis of judicial pronouncements reveals that the judicial approach of Madhya Pradesh high court is more reasonable as it does not force the wife to go in for a separate suit. The views

of Calcutta and Madhya Pradesh high courts, it is submitted, are most logical and jurisprudentially tenable and sound.

12. Islamic View :

Marriage is the basic unit of a component whole and is the foundation on which the superstructure of family and society is founded. To create the married state stable free consent of a male and a female is definitely necessary. Exceptional circumstances as a rule legitimize only to the extent that a different rule other than the general rule may be applied till the capacity to act independently is achieved or the emergency no more exists. The Apostle of Allah by the tacit approval of the Creator according to this super intellect decided controversies which constitute the basis of the principles of the 'option of puberty', hadith extend to women the right to repudiate the marriage forced on them through pressure direct or indirect under the assumption that girl being minor cannot exercise her independent discretion regarding the marriage due to her physical and mental immaturity and in such situation she can be the victim of undue influence:

1. Ibn Abbas reported that a virgin grown up girl came to the Prophet of Allah and narrated that her father had given in marriage to a person whom she disliked. Prophet gave her option.⁸⁷

2. Khansa b. Khidam reported that her father gave her in marriage, after she became a widow. She disliked it and came to the Prophet. He annuled the marriage.⁸⁸

A significant report which throws a flood of light on the complete liberty of choice and repudiation extended to women by Islam in the matter of their marriage is found in hadith collected by Nasa'i. The reporter is 'Ayesha(R) herself :

3. A girl came and stated that her father had given her in marriage to his nephew and she disliked him. I told him the full story of the girl. He at once sent for the father of the girl and enquired of him whether the facts stated were true, after which he told the girl that she was at liberty to choose or repudiate her husband. The girl replied saying that she choose to retain her marriage, and that she wanted only to know whether women had any right in the matter.⁸⁹

Another tradition from the collection made by Ibn Maja states :

'Ibn Umar' says: Uthman b. Maz'un left behind a young daughter. My uncle, Qudamah, married her to me, and did not even consult her. When the girl came to know of this, she disliked this marriage and wished to marry Mughirah b. Shu'bah. So she was married to Mughirah.⁹⁰

All these hadith provide 'conclusive proof that girl is as free in Islam as a body to choose or repudiate her partner and the Prophet's (peace and blessing be upon him) insistence on their being a guardian and rights in a society which was not yet completely free from the dominance of the male sex and in which a lonely woman had a chance of being outwitted by clever men and left without the necessary protection.⁹¹ This interpretation is supported by Hadith narrated by 'Ayesha'(R):

4. Marriage of a woman is invalid without their being a guardian. He repeated this three times and said that if the husband of such a woman had sexual intercourse with her, she should receive her dower and if, after the performance of the marriage, the two quarrel, then the ruler of the Muslims is the guardian of the woman who has no other guardian.⁹²

5. Another authentic hadith of the Apostle of Allah states that he gave away the daughter of Hamzah in marriage to 'Umar b. Abi Salamah while she was still a minor and declared that after she reached puberty, she was at liberty to repudiate the marriage.

Here the Apostle of Allah did not make any exception in favour of any guardian. He made a general statement covering all cases. This shows even a minor girl not married by her father or grand-father has the option to repudiate the marriage which, however, failed to attract the attention of some of the most recognized jurists of Islam.

According to Hanafi school if a minor has been in marriage by the father or father's father, the marriage is valid and binding and the minor has no right to repudiate it by exercising the option of puberty, unless the father or father's father has acted fraudulently or negligently or the marriage is to the manifest disadvantage of the minor. But, if the minor has been given in marriage by any other guardian, he or she has an unconditional right to repudiate the marriage on attaining puberty.

In every case, where, option is available, it must be exercised immediately on attaining puberty. Imam Abu Hanifa held the view that option must be exercised immediately on attaining puberty, while other authorities opined that it could be exercised without any unreasonable delay after attaining puberty. Also, this right is to be pressed while the marriage has not yet been consummated.

The option is in nature of right and not by way of concession. When a marriage is contracted by a guardian other than father and grand father, the girl can exercise this option as a matter of right.⁹³ However, where such marriage is manifestly not in the interest of the minor, then even where it is arranged by father or paternal grand father, it may be repudiated validly.⁹⁴ Such a situation may arise because a number of factors.⁹⁵:

- a) where dower grossly excessive or inadequate,
- b) where one of the parties belonged to a very low family or status,
- c) where father or grand father is a greedy character or is known to lack of discretion, and
- d) where either fraud or criminal negligence is manifest, and many other of similar nature.

According to Maliki school this privileged position exists only in case of father,⁹⁶ but according to Shafei the privilege is extended to father and paternal grandfather and marriage arranged by any one of the two shall be final and binding.⁹⁷ Hanbali law is like the Maliki law and Shia law is same as Hanafi law.⁹⁸

Any act done or omitted to be done like co-habitation or intimacy prior to the age of puberty will not affect the right of option.⁹⁹

In case of boy or girl, who is not virgin, assent or dissent may be expressed at the time of puberty but it may also be done after some time which must be reasonable. It is not necessary that such declaration should be made before witnesses.¹⁰⁰ The rule is very strict in case of virgin girl because she must express her dissent as soon as she develops the sign of puberty. Her silence will be construed to her disadvantage though it is not necessary that such dissent be expressed before the witnesses.¹⁰¹ But for the proof, it is necessary as in the absence of proof a mere statement will not be enough in case of consummation during the period of antecedent to puberty, the right is not lost because then she will be treated as a non-virgin.

Whenever she has expressed her dissent before witnesses, then mere delay in securing a legal divorce if it is for sufficient cause will not affect her right. Where a girl was ignorant of the fact of her marriage, then she will retain it till such time she becomes aware of it. Thereafter, according to Abu Hanifa and Abu Yusuf, no concession about time will be given on the basis of ignorance of law, but the view of Imam Muhammad is to the contrary.¹⁰⁴ In the absence of witnesses, the fact of the exercise of option cannot be legally established and hence uncorroborated statement will not be able the Qazi to take the positive action. Assent or dissent can also be referred from the conduct of the party concerned e.g. demand for maintenance or consummation of marriage.

13. Prohibition Relating To Unlawful Conjunction :

In case of Azizunnissa Khatoon Vs Karimunnissa Khatoon¹⁰³. One Gulam Ali, a wealthy Mohammedan had holder of the Sunni sect, residing in the district of Fareedpur, had married two sisters, Azizunnissa and Izzatunnissa, one after the other, by both of whom he had issue. In an administration suit, brought after his death, the first court held that children born of Izzatunnissa were legitimate and entitled to share in his inheritance Azizunnissa appealed to high court on the ground of illegitimacy of her sisters children. The Calcutta high court held, that marriage of a man with the sister of his wife who is legally married to him is "void" and that of children of such marriage are illegitimate. By way of corollary, the court added that the marriage was unlawful the issue of the second union could not be legitimatised by the acknowledgement of father. The learned judges quoted rule of Fatwa-i-Alamgir.

Again, what the judges had concluded is founded on several misapprehensions. In the first place, the author of Radd-ul-Mukhtar never challenges directly and indirectly the "opinions", enunciated in the Fatwa-i-Alamgir¹⁰⁴. It is only with respect to the marriage of a non Muslim with a muslim that she has professed to differ from the author of *Muhit of Sarakheri*¹⁰⁵. In second place, it is an error to say that the marriage of a second sister "rests precisely on the same basis as a marriage with a mother in law or a daughter in law. The learned judges looked at the question through English spectacles and, therefore, imparted English ideas Because under English law, wife's

sister also comes under prohibited degrees, But they forget that the Muslim law with a mother in law and the daughter in law are perpetually and absolutely forbidden, the wife's sister is forbidden only so long as the first marriage is not terminated by death or divorce¹⁰⁶.

Hedaya says, "if a man, engages with a women in an invalid marriage and cohibits with her. She becomes entitled to her customary dower but not more than the specified amount. "The descent of a child born of a woman enjoined in an illegal marriage is established (in the reputed father). For the establishment of paternity under an invalid marriage time is calculated from copula and not from the date of marriage.

The Fatwa-i-Kazi Khana says, "If a man married a woman by a invalid marriage and cohabits with her and gets a child by her, His nasab will be established from him if the child is born six months thereafter (i.e. after copula).¹⁰⁷

Lastly we can say that, when a man marries two sisters by one contract, the marriage performed batil or void. But in reality it is not; what is really meant is that the second union, whether contracted at the same time or afterwards, is nugatory or inoperative; but if consummated has the effect of a valid marriage in three particulars, viz., (i) in the establishment of the nasab of the issue in the father (ii) in the iddat incumbent on the woman and (iii) some dower obligatory on the man. Nevertheless the parties must be separated. There is absolutely no difference on these points between the jurists, text writers and commentators of the Hanafi School.

Later in case of *Tajbi Vs Moula Khan*¹⁰⁸ this case also related to marriage with two sisters and it was laid down by Bombay high court that the decision of *Azizunnissa case*¹⁰⁹ is wrongly decided. It is against the text of Muslim law and is not binding on this court. According to this new of Muslim law such a marriage is merely fasid (voidable) and not batil (void), and if it is consummated and children are born of it they are at any rate not illegitimate and cannot be excluded from inheriting the state of their father. The learned judges in this case relied upon the texts of Muslim law and also news thereof taken by modern text writers, viz, Baillie, Ameer Ali, Abdur Rahim, Abdul Rahman and others.¹¹⁰ The modern text writers, namely, Abdul Rahim observes a distinction between marriage, batil and fasid, and in spite of the decision of the Calcutta high court he is inclined to marriage of with a wife's sister as falling under the class of fasid and rendering the issue legitimate.¹¹¹ Abdur Rahman states that even if the marriage is bad, the children are legitimate¹¹² Ameer Ali took the view that the marriage was fasid and not batil.¹¹³

Conclusions :

Marriage under Islam is not a sacrament but a purely civil contract although solemnised with recitation of certain verses from Quran.

All the three aspects of a Muslim Marriage legal, social and religious - are examined by Fyzee. He observes that it is a contract for the legalisation of intercourse and the procreation of children. Mahmood's dictum he cites as classic exposition of the concept.

"Marriage among the Mohammedans is not a sacrament, but purely a civil contract; and though solemnized generally with recitation of certain verses from the Quran, yet the Mohammadan law does not prescribe any service peculiar to the occasion". Dr. Tahir Mahmood's view is that Muslim in India regard marriage as a "Solemn occasion in life" because of its socio religious significance. Sections 270 and 271 of Mull's Mohammedan Law speaks of a Muslim boy or girl, not attaining puberty, contract marriage through guardian (eg. father or paternal grand father) who is competent to give consent on his or her behalf. Tahir Mahmood stresses the correct position that the marriage - guardian acts as a "Mediator" and the minor is not his property, indeed the right of the minor to repudiate marriage on attaining puberty is well established; section 2(vii) of Dissolution of Muslim Marriage Act has accorded to it statutory recognition.

The legal rights of women have long been a source of misunderstanding which may have contributed to the belief, held by some, that women have a God given inferiority to men. While looking at the legal rights of women, a basic understanding of Islamic law is necessary. Understanding the difference between divine law and laws developed through human reasoning (the former law being permanent and mandatory, the latter law being subject to reformulation as circumstances require) is necessary to determine which rules are binding on us today and which were developed by jurists to address certain situations and can therefore be re-examined if circumstances warrant. Shariah is the law of God and it is incumbent upon Muslims

to observe it.¹¹⁴ The Divine sources of Shariah are the Quran and authentic teachings of Prophet Muhammad (SAW).¹¹⁵

For the most part, the Quran and Sunnah provide general principles of conduct with a limited number of specific legal rules.¹¹⁶ through the process of *ijtihad* (personal reasoning) the divine teachings can be interpreted and implemented to address the changing circumstances of Muslims; thus, *ijtihad* in the most important source of Islamic jurisprudence.¹¹⁷ *Fiqh*, on the other hand, is the law itself and it is derived from Shariah. *Fiqh* is not limited to the small number of revealed laws, rather it is the jurisprudence that is derived from Shariah.¹¹⁸ The development of *fiqh* is through human efforts to promulgate laws and as such it is not part reformulated to address changing circumstances.¹¹⁹

Legal rights, including those of women and connected cases, should be discussed in the light of principles of justice. Apart from marriage, divorce, the main controversy in regard to women's legal rights are in the area of witnessing and inheritance. While acknowledging that further research by Islamic scholars is needed in these areas to address changing circumstances and, if necessary to formulate *fiqh*, the divine and permanent laws of Shariah must be respected.

According to Professor Khalaf, who was Professor of Shariah at Cairo School of Law, states that all Shariah rules are based on their reasons; therefore, the existence or non-existence of a rule depends on the existence or non-existence of its reason. He further

states that a Shariah rule is applicable if its reason is present, even if the wisdom of the rule is not understood, however, a rule is inapplicable if its reason does not exist, even if the wisdom of the rule is clear.¹²⁰

As shown by the plethora cases on marriage laws, these cases contains many complicated rules that need further study and clarification in the light of Shariah laws. Muslim jurists may have recourse in these cases only in Islamic states but how should a Muslim minority in a non-Islamic state resolve these issues.

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Chapter - VII

CONCLUSION AND SUGGESTIONS

CONTENT

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In conclusion the data shows that in the Aligarh district 90 % population is literate and non formal form of education have also contributed in raising the literacy rate of Muslim women. Women have had access to and had benefited from other forms of education. Even in semi-urban and rural areas women have religious education and counts as literate. However those 10% are illiterate, they are migrant home based workers came from Bihar region for employment. But Findings also shows that in most of the family male members get preference over female in every matters. This evidence shows that the education levels are declining in the rural women. Education per se does not inform women's awareness as about Muslim Personal law, importance about contents of nikah-nama, compulsory registration marriage, knowledge about their social status rights as enshrined in Quran and sunnah, importance of consent in marriage negotiations and unhealthy attitude of Indian judiciary.

Women with formal education who have opted for Muslim Personal law to be retained without reform more than women with no education who preferred its replacement with gender just secular laws. Majority of women in Aligarh district working and even some house wives earning through the self employment like embroidery and handicrafts. In home based workers conditions are poor, their income does not exceed Rs 500 a month. These women totally ignorant about

their religious and legal rights though they offer prayers and read Quran. Women therefore participate in the employment as a need to sustain and support their families.

These are teachers, office employees, lawyers who earn their handsome amounts in comparison with home based workers and housewives.

Formally educated women want to marry according to their choice but they submit her wishes to their parents and marry according to their parents choice. But all the respondents in this survey want compulsory registration of marriage. Participations of these women in marriage negotiations with the permission of their elders. Thus we can find that there is clear relations between education, employment and decision making during marriage negotiations. Educations influence women's awareness and enhance their aspiration for changes and reformations under laws as well as strict imposition of laws when their is curtailment of their rights. All the respondents in this survey wanted to enact Muslim personal matrimonial code.

Women in many Islamic societies lack personal autonomy. Before marriage they are under the tutelage of their father or other male relatives. According to hypotheses findings of this designated research confirmed that they are expected to marry a husband chosen by her before marriage she obey her parents, after that obey their husbands, bring up children, stay at home and mostly avoid participation in public life. At every stage of their lives, they are

denied freedom of choice and their consent in different matters. They may be forbidden to acquire an education, prevented from getting a job and thwarted from exploring their full potential as members of the human community.

If we have watched an official Islamisation programmes in Saudi Arabia, Pakistan, Iran, Sudan and Afghanistan have led to serious violations of the human rights of women. Muslim conservatives in all Islamic countries, and even in nominally secular India, have refused to recognize women as full, equal human beings deserving of the same rights and freedoms as men. In actual practice this thought should not be in consonance with Shariah.

Laws and practices governing women's personal status, their legal capacity and role in the family continued to deny women rights. While this type of discrimination varied from region to region, women throughout the world found that their relationships to male relatives or husbands determined their rights. Some Saharan countries continued to use statutory and customary law to discriminate against women with regard to their status, property ownership and inheritance. So far as Nigeria, Ghana, Kenya, Uganda and Zimbabwe are concerned their statutory law reforms over last twenty years gave women equal rights to inheritance but judges in these countries continued to apply customary law, meaning thereby the situation is not improving in cases of women's issues.

. For instance personal status laws in Syria and Morocco, among other countries, continued to curtail women's right entering

into marriage contracts, during marriage, and at the dissolution of marriage. For example, in Syria, the minimum age for marriage was eighteen for boys and seventeen for girls. If a woman over the age of seventeen married without the consent of a male guardian, the guardian could demand the annulment of the marriage if the husband was not of the same social standing as the wife, and as long as the wife was not pregnant. The findings of these two countries corroborated and prove the survey findings in the Aligarh district, where researcher also highlight same sort of result in this study. Further, a Muslim Syrian women could not marry a non-Muslim, while a Muslim man had absolute freedom to choose a spouse from other religion. Syrian law also assigned different rights and responsibilities for women and men during marriage negotiations. A wife's "disobedience" could led to forfeiture of her husbands responsibilities to provide support. A man could legally have rights up to four wives simultaneously, while a woman could have only one husband. Women did not have the same right as men to end marriage; while the personal status law provide for the unilateral and unconditional right of a husband to effort divorce by repudiation, a women seeking divorce was required to go to court and prove that her husband neglected his marital duties.

Women's right activists globally continued their long standing campaign to eliminate discriminatory provisions in the personal status code or their wrong interpretation while decide a case which causes discrimination against with respect to women legal rights in marriage, divorce, child custody and inheritance. For

example in Morocco, it appeared that, as was the case with the reform of the personal status code in 1993, the king would be the final arbitrator on women's rights. On March 5, 2001, the king Mohammed VI formed a royal commission comprising religious scholars, judges, sociologists and doctors to consider amending the code. In a speech on April 27, 2001, he reiterated his commitment to improving the status of Moroccan women and eliminating discriminations against them according to the Islamic shariah and the values of justice and equality. Though advisory committee appointed by Prime Minister El-Yousoufi had failed to act on the issues during 2000. It will be ironic if a countries like India and Islamic countries which so loudly profess its commitment to improve the women status is not serious.

In the midst of the darkness that engulfed the world, the divine revelation echoed in the wide desert of Arabia with a fresh, noble and universal message to humanity: "O mankind keep your duty to your Lord who created you from a single soul and from it created its male (of same kind) and from them twain has spread a multitude of men and women (Quran, 4:1). It is believed that there is no text, old or new that deal with the humanity of the woman from all aspects with such amazing brevity, eloquence, depth, and originality as this divine decree.

The Quran clearly indicates that marriage is sharing between the two halves of the society. Its basis are love and mercy.

According to all the provisions for her shows protection at the time of marriage, it was specially decreed that woman has the full right to her mahr, a marriage gift, which is presented to her by

her husband and included in the nuptial contract, and that such ownership does not transfer to her father or husband. The concept of mahr in Islam is neither an actual or symbolic price for the woman as was the case in certain cultures, but rather it is a gift symbolizing love and affection.

- Women consent in Marriage was not generally thought to be necessary and she was obliged to submit to the wishes of her parents and then submit to her husband and her lord, even though they were stranger to each other. Family laws pertaining to marriage and divorce that reinforce the image of relationships based on hierarchy with the rights of the husband superseding those of the wife and that prevent women from being in control of their lives.

- Women want equality with men and in most recent women's movements the concept of "personal choice" has become central. Over the years, feminists have devoted considerable energy and resources to preserving women's right to choose her life partner, expanding the number of options her women to chose from, and mobilizing sufficient resources to enable women to act on their own desires rather than those of their families.

- A compulsory system of registration of Muslim marriage and divorce should at once be introduced by the government. The proposal to work on optional law by means of officers styled Qazi would lead to no beneficial results. In spite of opposition of certain sections of Muslim community it may be said that a compulsory registration of marriage law would be regarded as a public boon by the majority of Muslims.

- A compulsory system of registration of marriage and divorce exists in all Muslim countries, so why not in India ? This is high time to enact Muslim personal matrimonial code.
- Indian Muslims should develop effective non governmental organisations to launch literacy campaigns, particularly for women literacy.
- Abuses of certain Islamic practices that affect women negatively, such as polygamy and temporary marriage when applied out of context and without abiding by Islamic restrictions should be controlled by strict implementations of laws.
- There is need to enhance frequency of Muslim women in the Muslim personal law board so that they take their problems in a right perspective.

Those who desires to change in Muslim Personal law argue that on the whole Muslim law in respect of women tends to be quite progressive. Marriage is civil contract with equal rights for both the parties to stipulate conditions as marital contract would be valid on fulfilment of those conditions. Thus woman may always stipulate conditions which would protect them from whimsical behaviour on the part of the spouse. A woman can always stipulate that the husband shall not take a second wife at all or without her previous consent. Both these conditions will be Islamically valid. She can also delegate to herself the right to divorce on behalf of her husband (known as talaq-i-tafwid) in her nikah-nama (marriage contract). Some nikah-nama have also been devised to include these conditions in a standard form.

The main areas of reforms in the Muslim Personal law are as follows :

- a. Polygamy
- b. Arbitrary divorce
- c. Maintenance after divorce
- d. Review of consent doctrine
5. Uniform civil code etc.
6. Enactment of Muslim matrimonial code.

Many eminent Muslim scholars of the subcontinent, like Syed Amir Ali, Maulvi Chirag Ali, Sir Syed, Sir Mohd. Iqbal and several others have advocated for reforms in Muslim Personal law and greater justice for women. Educated women herself want reforms under Muslim Personal law in certain issues.

Instead of common civil courts women want separate Muslim matrimonial code in the future. But instead of reforms we submit there is need to establish theories of adjustments under matrimonial laws in light of Shariah.

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Creation

- * Story of Adam and Eve 2:30-39, 7:11-25, 20:115-123 (conscious of nakedness), 15:26-40.
- * Created from one entity, then mate, then multitudes 4:1,6:98
- * Created out of male and female into nations and tribes 49:13
- * Brought into being out of one entity 6:98, out of it, its mate 39:6
- * Created from one entity, then mate so incline towards one another 7:189, mates of own kind 16:72, marriage-tie 53:54
- * Created mates from selves(pairs/opposite) 36:36,43:12,51:49,78:8
- * Creates males/females out of drop of sperm 53:45, 75:37-39,92:3, out of loins, pelvic arch 86:5, 15:27

Gender Parity/Disparity

- * Two female witnesses 2:282 Other references to witnesses: property 0 orphans, lewdness 4:6, 15; bequests 5:106-108, adulter 24:4-9, divorce 65:2
- * Inheritance 4:7, 11-12, 33 176
- * Blood money for murder (female for female, slave for slave) 2:178-9(note 147)
- * Reward for labor of believing men/women 3:195
- * You are member, one from another 4:25
- * Believing men and women get benefit from what they earn 4:32
- * Believing men and women, protectors of one another 9:71-72
- * Good deeds of believing men and women will be rewarded 4:124,57:18, 48:5, 40:40, 9:72, 16:97,48:5
- * Say to believing men and believing women...33:33-36***

- * Ask forgiveness for yourself and believing men/women 47:18, 71:28 (du'a)
- * Suffering for hypocrites male/female, mercy, for believers male/female 33:72,57:12-13
- * Corrupt women are for corrupt men 24:26
- * Hypocrites, male/female 9:67-68, 48:6
- * Those who persecute believing men/women and don't repent will suffer in hell 85:10
- * Those who malign believing men/women 33:58
- * Bai'ah (pledge of allegiance to prophet) from believing women 60:12

Marriage

- * Unlawful to marry non-believers 2:221, 60:10-11
- * Outlines who is lawful/unlawful for marriage, dowry 4:4, 19-28
- * Lawful to marry women from people of the Book 5:5
- * Do not betroth in secret 2:235
- * They are your garments 2:187
- * Approach wives as you will, they are your tilth, avoid sex during menses 2:22-223
- * Consort with wives in goodly manner, do not keep against will 4:19
- * Friend by your side (spouse) 4:36
- * Mates from among yourselves 7:189, 16:72, 42:11
- * Ask for spouses/offspring who are a joy to our eyes 25:74
- * Mates, tranquility and love 30:21
- * Enemies among spouses and children, pardon and forbear 64:14

- * God endowed men with descent and marriage-tie 25:55
- * Get married even to your slaves, if can't marry, stay chaste 24:32-33
- * Be mindful of chastity, relations only with spouse or whom right hand possess 70:29-3123:5-6
- * Men protectors of women, discord (nushuz), arbitration 4:34-35
- * Nushuz from husband to wife 4:128
- * Marriage to adopted son's ex-wife 33:37-40
- * Lawful women to prophet included slaves, first cousins, no more wife after this verse 33;50-52
- * Polygamy 4:3, 127-129 (other references to orphans 2:219,4:5, 6;152)

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- * General rules 2.224-237, Ch. 65 (talaq)
- * Decisions re children (shura), nursing, parents not to suffer because of child 2:233
- * Waiting period (iddah), treat in fair manner without harshness, spend on wife, children while pregnant, nursing (alimony/child support) 65:4-7, alimony2.241
- * No waiting period if marriage not consummated 33:49
- * Khul, woman gives up dowry to free herself if no offense by husband 2:229
- * Don't retain women against their will 2:231
- * Don't hold women against their will, don't take back dowry 4:19
- * Rights equal, but men have precedence (daraja) 2:226-228 (cf: 6:165)
- * Act with grace 2:237

- * If do separate, God will provide 4:130
- * Nushuz from husband, seek amicable settlement 4:127-130
- * If choose to separate, take witnesses endowed with justice; God grants a way out 65:2
- * arbitration in conflict 4:35
- * Zihar forbidden 58:1-4
- * Don't send women back to mushrik husbands, don't stay married to women unbelievers 60:10-11.(women not property)
- * Don't expel from homes unless guilty of immoral conduct 65:1
- * Widows
- * Iddat/remarriage 2:234-5 right to one year maintenance (unless remarries) 2:240

Sex Crimes

- * Women guilty of immoral conduct (lewdness, implies homosexuality) 4:15-16.
- * Punishment for zina, slander 24:2-26.
- * Punishment for slandering chaste women, requirement for witnesses 24:4-25.
- * Corrupt women for corrupt men, chaste for chaste 24:3, 26.
- * Mind chastity 23:5, 70:29-30.
- * Do not commit zina 17:32, 25:68, 60:12.
- * Homosexuality (Lot) 7:80-84, 11:69-83, 15:58-76, 21:71, 26:160-174, 27:54, 29:29.

Women in Qur'an

- * Mary 3:31-49 (bows down with those who bow down), never deviated from truth 5:75, 19:16-29, sing from God 23:50, 21:91, 4:156 (Mary a prophet, among those inspired ("rijal") 12:109, 15:43, 27:7; "nas" 22:75)

- * Queen of Sheba 27:23-44
- * Wife of Abraham 11:71-73
- * Zulaykha in story of Yusuf 12:24-35,51
- * Women in story of Moses, mother given inspiration 20:37-41, 52:39; sisters, wife of pharaoh 28:7-13, marriage of Moses 28:23-28
- * Lot's wife/Noah's wife/Mary/wife of Pharaoh are examples for all believers 66:9-10
- * Prophet's wives, Not like other women, greater punishment/reward, stay in houses 33:28-34
- * Mothers of Believers 33:6
- * Speak to his wives from behind a screen, don't marry his widows 33:53-55
- * Divulged confidence, offered divorce, may substitute better, virgin or previously married 66:1-5
- * Marriage to Zaineb 33:37-40
- * No more wives after this verse 33:50-52
- * Story re Aisha and the necklace 24:11-20

Quranic References :

Note : The Roman numeral refer to the topics in the text. The Arabic numerals refer to the Chapter and the Verse of the Qur'an i.e. 5:32 means chapter5, Verse 32.

- I 1 Qur'an Al-Maidah 5:32
- 2 Qur'an As-Shura 42:41
- 3 Qur'an Al-Hajj 22: 41
- 4 Qur'an Al-Ahqaf 46:19
- 5 Qur'an Al-Mulk 67:15
- 6 Qur'an Al-Zalzalah 99:7-8
- 7 Qur'an An-Nisa 4:59
- 8 Qur'an Al-Maidah 5:49
- 9 Qur'an An-Nisa 4:148
- 10 Qur'an Al-Isra 17:15
- 11 Qur'an Al-Ahzab 33:5
- 12 Qur'an Al-Hujurat 49:6
- 13 Qur'an An-Najm 53:28
- 14 Qur'an Al Baqarah 2:229
- 15 Qur'an Al-Isra 17:15
- 16 Qur'an At-Tur 52:21
- 17 Qur'an Yusuf 12:79
- 18 Qur'an Al Ahzab 33:58
- 19 Qur'an Al-Hujurat 49:12
- 20 Qur'an Al-Hujurat 49:11
- 21 Qur'an Al-Tawba 9:6

- 12 Qur'an Al-Imran 3:97
- 13 Qur'an Al-Baqarah 2:125
- 14 Qur'an Al-Hajj 22:25
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- 16 Qur'an Al-Maidah 5:42
- 17 Qur'an Al-Maidah 5:43
- 18 Qur'an Al-Maidah 5:47
- 19 Qur'an As-Shura 42:38
- 20 Qur'an Al-Ahzab 33:60-61
- 21 Qur'an Saba 34:46
- 22 Qur'an An-Nisa 4:83
- 23 Qur'an Al-Anam 6:108
- 24 Qur'an Al Kafirum 109:9
- 25 Qur'an Yusuf 12:108
- 26 Qur'an Al-Imran 3:104
- 27 Qur'an Al-Maidah 5:2
- 28 Qur'an Al-Maidah 5:120
- 29 Qur'an Al-Jathiyah 45:13
- 30 Qur'an Ash-Shuara 26:183
- 31 Qur'an Al-Isra 17:20
- 32 Qur'an Hud 11:6
- 33 Qur'an Al-Mulk 67:15
- 34 Qur'an An-Najm 53:48
- 35 Qur'an Al-Hashr 59:9
- 36 Qur'an Al-Mairaj 70:24-25

- 37 Qur'an Al-Mutaffifin 83:1-3
- 38 Qur'an Al-Baqarah 2:275
- 39 Qur'an Al Baqarah 2:188
- 40 Qur'an At-Tawbah 9:105
- 41 Qur'an Al-Ahqaf 46:19
- 42 Qur'an At-Tawbah 9:105
- 43 Qur'an Al-Ahzab 33:6
- 44 Qur'an An-Nisa 4:1
- 45 Qur'an Al-Baqarah 2:28
- 46 Qur'an Ar-Rum 30:21
- 47 Qur'an At-Talaq 65:7
- 48 Qur'an Al-Isra 17:24
- 49 Qur'an At-Talaq 65:6
- 50 Qur'an An-Nisa 4:34
- 51 Qur'an At-Talaq 65:6
- 52 Qur'an At-Talaq 65:6
- 53 Qur'an Al-Baqarah 2:229
- 54 Qur'an An-Nisa 4:12
- 55 Qur'an Al-Baqarah 2:237
- 56 Qur'an Al-Isra 17:23-24
- 57 Qur'an Al-Imran 3:187
- 58 Qur'an Al-Hujurat 49:12
- 59 Qur'an Al-Mulk 67:15
- 60 Qur'an Al-Anam 6:11
- 61 Qur'an An-Nisa 4:97
- 62 Qur'an Al-Baqarah 2:217
- 63 Qur'an Al-Hashr 59:9

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GLOSSARY OF ARABIC TERMS

Adam	The first man created by God
Allah	God
Ayat	Stanza from Quran
Burkha	A coat and a cape-veil
Chadar	Sheet, large shawl used by women
Din	Religion
Duppatta	Chunni
Hadith	Traditions and practices of the Prophet (SAW)
Hauwa	Eve
Hisbah	Public vigilance, an institution of the Islamic State enjoined to observe and facilitate the fulfilment of right norms of public behaviour.
Iddat	The waiting period of a widowed or divorced woman during which she is not to re-marry.
Ijtihad	To form an opinion in legal matters to re-interpret the tradition
Jamat	Collection of people
Jehad	A holy-war
Khalifa	The Lieutenant or head of all Muslims
Khalifat	The vicegerency of man on earth or succession to the Prophet (SAW), translated into English as the Caliphate.
Khoja	A Muslim Religion sect

Khula	Divorce a woman obtains at her own request.
Mahr Muazil	Women is entitled to the dower money only after divorce
Mahr Muwazil	Dower given at the time of marriage in cash or any other kind
Maroof	Good act.
Mufti	Canon lawyer
Munkar	Reprehensible deed
Nikah	Marriage
Nikhanama	Document in which the conditions of marriage contract laid down.
Purdah	Curtain, seclusion
Shariah	Totality of ordinances derived from the Quran and Sunnah or Islamic law.
Shia	A religion's sect or followers of Hazrat Ali
Sunnah	The example of way of life of the Prophet (SAW), embracing what he said, did nor agree to.
Sunni	A religioun's sect of Islam
Surah	Any of the 114 Chapters of the Quran
Taqlid	To follow the traditional authority
Ummah Islamia	World Muslim Community
Ummah	Islamic community
Ulema	Islamic scholar

Wali	A person who is authorised to act as guardian or bride/groom at the time of marriage
Zakat	A tax supposedly 40% of personal income, levied on Muslims for the relief of the poor, the purifying tax on wealth
Zilhij	Twelfth month of Islamic calendar
Zanan	Female feature
Zan-e-Rouz	Female today Bulletin

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- Mohiuddin Vs. Khadijabibi (41 Bom. L.R. 1020)
- Roshanbai Vs. Suleman Haji Ahmed Umar (AIR (31) 1944 Bom. 213).
- Abdul Ahad Vs Mst. Shah Begum (AIR 1997 J. & K 22)
- Ayub Hasan Vs. Mst. Akhtari (AIR 1963 All. 525)
- Munshi Vs. Alam Bibi (AIR 1932 Lah. 280)
- Niffisun Nisa Vs. Mirza Mumtaz (AIR 1922 All. 1363).
- Sibi Ahmad Vs. Amina Khatoon (AIR 1929 All. 18).
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- Kunnath Adem Vs. Janab R.P. Mammad (1990 (2) Civil L.J. Ker. 357).
- Szechter Vs. Szechter (196, 3 All. E.R.)
- Mst. Ayesha Vs. Muhammad Yusuf (AIR 1925 Lah. 66).
- Kanoo Vs. Bhag Bhwi (1924 Lah. 385).
- Abdul Karim Vs. Amina Bai (1936 ILR, Bom. 426).
- Nizamuddin Vs. Hussain (AIR 1960 MP 212)
- Azizunnissa Khatoon Vs Karimunnisa Khatoon (1895, 23 Cal. 130).
- Tajbi Vs. Moula Khan (1917, 41 Bomb. 485).

ANNEXURES

ANNEXURE - I
QUESTIONNAIRE
ON
"Negotiating in Marriage Contract : A Socio-Legal Study "
for
General Awareness
APPEAL

The basic objective to assess and analyse the role of the Muslim Women before negotiating in the Marriage contract and impact of Shariah laws with special reference to district Aligarh.

The information provided by you will be most objective and realistic, based on your own personal experiences. This will help to find out factual causes related to this problem and its analysis with suggestions. The information given through this questionnaire will remain confidential and will not be used in any way other than for research purpose. I hope your co-operation with us is fruitful for the entire Muslim Community.

I am highly thankful for your cooperation.

(Tanzeem Fatima)
Ph.D. Scholar
Department of Law
AMU, Aligarh

Name :	Occupation :
Age :	Place :
Sex :	
Sect :	

If multiple choice questions below are not from among the following multiple options, use following abbreviations.

NC - No comment
DN - Don't know
NS - Not sure
NA - Not applicable
NF - Not filled

I. Educational Status : Self

1. What is your education level ?
 - a. Illiterate
 - b. Upto Class V
 - c. Between VI to XII
 - d. Graduate
 - e. Highly Educated
2. What type of education have you receive?
 - a. Informal
 - b. Formal
 - c. Religious
 - d. Self Study
 - e. Other Type
3. Which language can you read ?
 - a. Hindi
 - b. English
 - c. Urdu
 - d. Arabic
 - e. Other Type
4. Which language can you write ?
 - a. Hindi
 - b. English
 - c. Urdu
 - d. Arabic
 - e. Other Type
5. Are you trained in any of the following professional skill ?
 - a. Cooking
 - b. Embroidering
 - c. Tailoring
 - d. Beauting Culture
 - e. Other Type
 - f. All of the above

II. Education Status : Family

1. Upto what level is she/he educated?
 - a. Illiterate
 - b. Upto class V
 - c. Between VI to XII
 - d. Graduate
 - e. Highly educated
2. Who is Most Educated adult in your family?
 - a. Father/Mother
 - b. Husband
 - c. Sister/Brother
 - d. Son/Daughter
 - e. Any other person please specify, _____
3. Who is least educated?
 - a. Father/Mother
 - b. Husband
 - c. Sister/Brother
 - d. Son/Daughter
 - e. Any other person please specify, _____

III. Economic Status of the Parties - Employment

1. You Are
 - a. Housewife
 - b. Home-based worker
 - c. Self employed
 - d. In service-specify
 - e. In business
2. If not a housewife, what is your earning per month?
 - a. Less than 500
 - b. Between 500 to 5000
 - c. Between 5000 to 10,000
 - d. Between 10,000 to 15,000
 - e. Above 15,000

IV. Religious Practice

1. Do you pray
 - a. Daily
 - b. Festivals
 - c. Friday
 - d. During Crisis
 - e. Never
2. You fast in Ramzan
 - a. Daily
 - b. Some days
 - c. Friday
 - d. During crisis
 - e. Never
3. Do you read the Quran?
 - a. Daily
 - b. Sometimes
 - c. On occasions
 - d. Never
4. In which language do you read the translation of Quran
 - a. Arabic
 - b. English
 - c. Urdu
 - d. Hindi
 - e. Any other please specify, _____
5. Do you understand Quranic verses
 - a. Yes
 - b. No
 - c. Partially
6. Do you believe in practice of Pardah in any form?
 - a. Yes
 - b. No
 - c. Burqa
 - d. Covers head with dupatta or Chadar
7. Are you very well aware of Quranic laws
 - a. Yes
 - b. No
 - c. Few Laws

V. Negotiations before Marriage

1. You are
 - a. Married
 - b. Single
 - c. Widowed
 - d. Divorced
 - e. Separated

2. If married, divorced, widowed, separate and single, what was your age at the time of marriage?
 - a. Less than 10 years
 - b. Between 10 to 15
 - c. Between 20 to 25
 - d. Between 15 to 20
 - e. Above 25

3. What was your husband's age at the time of marriage?
 - a. Less than 10 years
 - b. Between 10 to 15
 - c. Between 15 to 20
 - d. Between 20 to 25
 - e. Above 30

4. What type of marriage it was?
 - a. Civil
 - b. Customary
 - c. Nikah
 - d. Love
 - e. Any other form please specify, _____.

5. Are you in the favour of marrying in relations
 - a. Yes
 - b. No
 - c. Just to obey your parents order, _____.
 - d. Due to any other reason please specify, _____.

6. Have not you seen your husband while negotiating marriage?
 - a. Yes
 - b. No
 - c. Photograph only
 - d. Any other means please specify, _____.

7. What are the considerations taken into account during marriage negotiations?
 - a. Economic Status
 - b. Prestige
 - c. Looks
 - d. High casts
 - e. Any other type please specify, _____.

VI. Standard Nikah-Nama

1. Are you aware with the contents of the Nikah nama?
 - a. Yes
 - b. No

- 2. Are you agree to accept Nikah-name made by Muslim Personal law board?**
- a. Yes b. No
- c. If yes/No, Please specify the reason,

3. Do you agree to accept nikah-nama made by combined efforts of Muslim women groups and by the Muslim Personal law board?

a. Yes b. No
4. Do you agree to accept nikah-nama made by combined efforts of Muslim personal law board, Muslim women groups by ulema?

a. Yes b. No.
5. Do you agree for the compulsory registration of marriage?

a. Yes b. No.
6. Will you like to incorporate in nikah-nama all the conflicting issues under various forms of divorce particularly triple talaq and delegated divorce?

a. Yes b. No
7. Are you in the favour of taking maintenance in case of dispute?

a. Yes b. No
8. Do you feel there is need to reform standard nikah-nama?

a. Yes b. No
9. Do you like to add a clause in which under terms and conditions of marriage regarding the amendments of the existing laws to ensure adequate maintenance for wife untill her present status changes by virtue of re-marriage or economic self sufficiency?

a. Yes b. No
10. Will you like to take mahr payment provided by Shariah laws?

a. Yes b. No
11. Will you like to take mahr amout and mode of payment according to your wishes?

a. Yes b. No

VII. Choice and Importance of Consent of teh girl

1. Do you know Meaning of choice?
 - a. Yes
 - b. No
2. Are you agree to marry according to your parents choice?
 - a. Yes
 - b. No
3. Do you know women under Islam have a right to choice in Marriage negotiations.
 - a. Yes
 - b. No
4. Are you Aware of all the Quranic provisions, where Allah! Mention about your rights while negotiating for the marriage contract?
 - a. Yes
 - b. No
5. If there is a conflict between your choice and your parents choice which one will prevail?
 - a. Parents choice
 - b. Your choice
6. Do you consented to the marriage?
 - a. Yes
 - b. No
7. Do you feel women consent is important under marriage negotiations?
 - a. Yes
 - b. No
8. What is accepted form of consent?
 - a. Explicitly yes
 - b. Your silence considered yes
 - c. Nodding head.
9. Do you agree not only parents consent but consent of girl is also important for marriage?
 - a. Only parents
 - b. Only girl
 - c. both
10. Whether your parents sought your consent at the date of nikah?
 - a. Yes
 - b. No

VIII. Role of the Muslim Personal Law Board and Indian Judiciary

1. Do you agree Indian Judiciary has apply and interpreted Muslim Personal Law to all disputes governing family matters of Muslim

women correctly?

- a. Yes b. No

2. Do you agree in Indian Muslim observe not only Muslim Personal Laws but also following their customary and traditional laws and so these also accepted by Indian Judiciary?

- a. Yes b. No

3. If there is tension between Muslim Personal law and Procedural laws, will you agree that the Muslim law will prevail over procedural laws?

- a. Yes b. No

If Yes/No please specify, _____

4. Is it true that there are loopholes in Muslim Personal Law, which prevents women from getting justice?

- a. Yes b. No

5. Are you like changes under Muslim Personal law?

- a. Yes b. No

XI. General views

1. Are you free to move within your city ?

- a. Yes b. No c. Not alone
d. Only in company of other family members, friends etc.

2. Do you feel Muslim Personal Law is discriminatory to women?

- a. Yes b. No

3. In which issues do you feel Muslim Personal Law is discriminatory

- a. In Talaq
b. In Polygamy
c. In Maintenance
d. In Mahr
e. In Inheritance
f. All the above

4. Should the practice of unilateral talaq be abolished in the future

- a. Yes b. No

5. Should the practice of polygamy be abolished in the future

- a. Yes b. No

6. Was the mahr amount paid on divorce?

- a. Yes b. No

7. Do you know what is iddat?
 - a. Yes
 - b. No
8. Whether practise of iddat be followed or not?
 - a. Yes
 - b. No
9. Should the dowry be returned back in case of divorce against certain circumstances?
 - a. Yes
 - b. No
10. What do you think about ideal size of family?
 - a. One children only
 - b. Two children
 - c. More than two
11. Do you think in our culture male child is necessary for an ideal family ?
 - a. Yes
 - b. No
12. Do you think polygamy is Islamic?
 - a. Yes
 - b. No
13. Will you permit your husband to go for second marriage, if you don't have male child?
 - a. Yes
 - b. No
14. Do you think husband is liable to maintain his wife and children after divorce.
 - a. Yes
 - b. No
15. Is it ture that use of contraceptives and abortion is un-Islamic?
 - a. Yes
 - b. No
16. Are you permitted to spent your income according to your will?
 - a. Yes
 - b. No
17. If no than do you handover your income to your husband?
 - a. Yes
 - b. No
18. Are you free to open and operate your own bank account?
 - a. Yes
 - b. No

19. Are you free to open your joint account with your husband?
- a. Yes
 - b. No
 - c. Under pressure
20. What is your family income level, if both husband and wife are working?
- a. High
 - b. Medium
 - c. Low
 - d. Very low
21. Are you aware that daughter also had the right to share his father's property?
- a. Yes
 - b. No
22. Do you agree that in India there should be Muslim Matrimonial code?
- a. Yes
 - b. No

1. What is acceptable age of marriage for women ? Why ?
2. Who arranges marriage ? In what capacity ?
3. What is accepted form of consent ?
4. How and when are negotiations for marriage contract are made ?
5. How does the marriage takes place ? Describe in detail ?
6. Do you think there must be compulsory registration of the marriage ?

7. Do you know the content of nikha-nama and its importance ?
8. Do you think girl's consent is important while negotiating in the marriage contract ?
9. Do you know Islam provide right to choice to women while go for marriage contract ?
10. Do you want reforms in Muslim Personal law in accordance with Shariah laws ? If yes, why ?

Part II

1. Is there any conditional Marriage contract ?
2. Is Nikah-nama pre-printed ? Can women stipulate conditions ? Cite any instance of woman stipulating conditions in the Nikah-nama.
3. Is dowry a clause in nikah-nama ? What is your opinion ?
4. What are the numbers of marriage conducting during the year in the entire district ? What would be the approximate percentage ?
5. Are there is any instance of "halala" marriage ? What procedure women have to follow for halala marriage ?
6. What is the most common reason of divorce ? who initiate first? and why ?
7. Do you believe Islam provides right to choose your husband but generally parents will not ask to girl ? why ?
8. Do you think there must be compulsory registration of marriage contract ?
9. Do you think consent of the girl is important for marriage contract ?
10. Do you think Muslim Personal law needs to be reformed ? If yes/ No, what should be the reforms ?

12. Do you think Muslim Personal law instead of reforming changed by gender, just and secular uniform code ?
13. Do you think there is need to establish a Muslim Matrimonial Code ?

ANNEXURE - I I I

I

MUSLIM MARRIAGE CONTRACT/PLEDGE

This Contract has been prepared by the Islamic Fiqah Academy, and is being used here as an example of the efforts being made by various Muslim groups to introduce a standard format.

1. The husband and the wife pledge allegiance to Islam and Shariat.
2. I daughter of pledge that I will obey my husband in all legitimate matters and will treat him and his family with courtesy and decency. I will be loyal to him even in adverse circumstances.
3. I son of pledge that I will live decently with my wife and grant her those rights which are demanded of me by the Shariat.

Moreover, if any of the following conditions occur and if the Islamic Court or Arbitrators or Muslim community or panchayat-biradri are satisfied/assured of the condition, formally or informally, and state their satisfaction in writing, then the wife will have the right of separation, through *Talaq-e-baain* (final divorce) either at that time or till that condition prevails.

- (a) Husband's absence/disappearance for 2 years
 - (b) Refusal to pay her maintenance despite her making claim for it, or
 - (c) Abstaining from performing his conjugal duty
 - (d) When the husband is lunatic or idiot or suffering from sexually transmitted disease, or
 - (e) Indulges in violence (physical) against the wife or
 - (f) Has illicit sexual relations with other women or
 - (g) Forces the wife to indulge in immoral activities
4. If the husband feels the need for a second marriage despite the presence of the present wife then he will clearly explain his reasons to the Islamic Court or local Ulema, or responsible members of biradri as to why he wants to marry again, whether he can afford to keep two wives, and whether he can do justice to both according to the demands of Shariat.
 5. If the husband marries again he will be bound to provide his second wife a separate residence if the first wife so demands.
 6. The children born of the first wife cannot be separated from the mother during the lactation period. After that period upbringing of the child must be decided by the judge according to the consideration of whatever is in the best interest of the child.
 7. The foregoing of the Mehr by the wife will be considered authentic only if it is assured that she has not done so under any pressure, out of or innocence, or ignorance of the rules governing mehr, or through any kind of fraud.

Address _____
 Occupation _____
 Relationship with the wife _____

Name of Vakil of Nikah with
 father's name (representing the husband) _____
 Age _____
 Address _____
 Occupation _____

Witness no.1 seeking wife's consent for marriage : _____
 Name with father's name _____
 Age _____
 Address _____
 Occupation _____

Witness no.2 seeking husband's consent for marriage _____
 Name _____
 Age _____
 Address _____
 Occupation _____

Witness of the Nikah (No.1)
 Name with father's name:
 Age
 Address
 Occupation

Witness of Nikah(No.2)
 Name with father's name:
 Age
 Address
 Occupation

Mehr (*amount*).

If the husband marries again during the lifetime of his first wife, without consultation with the Islamic Court or if he divorces her, in that case the amount of mehr will be (*amount plus.....*)



8. While divorcing, the husband will do so according to rules of Sharia. He will refrain from doing so without a Sharai reason or without consultations with the Islamic Court of local Ulema. Moreover if it becomes necessary to divorce the wife, then he will not pronounce more than one divorce in one sitting.

9. At the time, all those things, which were given to the wife by her family and friends or by the husband's family or friends, will be considered as the property of the wife.

10. We the spouses pledge that if, God forbid, any dispute arises between us, then the Islamic Court, Muslim community or Panchayat-biraadri will be the third party arbitrator. All domestic disputes, including divorce by husband, seeking of divorce by the wife, mehr, lactation period, maintenance etc. will be decided at the discretion and full satisfaction of the arbitrator.

Signature
Husband

Signature
Wife

Signature
First Witness

Signature
Second Witness

Signature
Qazi

Nikahnama

Husband's name with father's name

Age

Address

Present Occupation

First or Second Marriage

Wife's name with father's name

Age

Address

Present Occupation

First or Second Marriage

In case of second marriage; is the marriage taking place after the death of the first husband or after divorce?

Name of the Vakil of Nikah with father's name (representing the wife)

Age

زوج

Ph.510727

سند نکاح از دفتر قضاہ محمد اہل ضلع

بنی اسرائیلان علی گڑھ منجانب حکومت اتر پردیش گزٹ نوٹیفکیشن

مورخہ ۲۶ مئی ۱۹۸۴ء No. 1766/VII- A. No. 473 - 12/4/84

برائے تحصیل ہائے کول، سکندراراؤ، اترولی، بکیر اور اگلاس معہ پرگنہ جات و مواضعات

تاریخ نکاح	مورخہ ————— ماہ ————— سنہ ۲۰۰۰
مقام نکاح	
نام شوہر معہ ولدیت	
قوم و سکونت و عمر	عمر
نام زوجہ ولدیت	
قوم و سکونت و عمر	عمر
تاکتہ، بیوہ، مطلقہ	
نام وکیل معہ ولدیت	
وسکونت	
نام گواہ معہ ولدیت	
وسکونت ۱۔	
نام گواہ معہ ولدیت	
وسکونت ۲۔	
نوعیت و تعداد	
زرہر	
عبارت و رستم میں	
دستخط قاضی ضلع	
ہر	نکاح خواہ

(مسلم ایجوکیشنل پریس، بنی اسرائیلان، علی گڑھ)

EDUCATION OF THE RESPONDENT : SELF

TABLE 1.1

LEVEL OF EDUCATION			
ITEM NO.	LEVEL	WOMEN'S RESPONSE	
		Freq.	%age
1	Illiterate	133	26.60
2	Up To 5th	27	5.40
3	Between 6 - 12	41	8.20
4	Graduate	177	35.40
5	Highly Educated	100	20.00
6	Miscellaneous	22	4.40
	TOTAL	500	100.00

TABLE 1.2

TYPE OF EDUCATION			
ITEM NO.	TYPE	WOMEN'S RESPONSE	
		Freq.	%age
1	Informal	8	1.60
2	Formal	310	62.00
3	Religious	61	12.20
4	Self study	22	4.40
5	Miscellaneous	99	19.80
	TOTAL	500	100.00

TABLE 1.3

LANGUAGE : READ			
ITEM NO.	LANGUAGE : READ	WOMEN'S RESPONSE	
		Freq.	%age
1	Hindi	104	20.80
2	English	46	9.20
3	Urdu	83	16.60
4	Above All	177	35.40
5	Miscellaneous	90	18.00
	TOTAL	500	100.00

TABLE 1.4

LANGUAGE : WRITE

ITEM NO.	LANGUAGE WRITE	WOMEN'S RESPONSE	
		Freq.	%age
1	Hindi	88	17.60
2	English	50	10.00
3	Urdu	94	18.80
4	Above All	145	29.00
5	Miscellaneous	123	24.60
TOTAL		500	100.00

TABLE 1.5

TRAINED IN ANY SKILL

ITEM NO.	SKILL	WOMEN'S RESPONSE	
		Freq.	%age
1	Cooking	298	59.60
2	Embroidering	35	7.00
3	Tailoring	61	12.20
4	Beauty Culture	17	3.40
5	Miscellaneous	89	17.80
TOTAL		500	100.00

EDUCATION : FAMILY

TABLE 2.1

EDUCATION IN THE FAMILY OF THE RESPONDENT

ITEM NO.	EDUCATED ADULT	WOMEN'S RESPONSE	
		Freq.	%age
1	Father/ mother	82	16.40
2	Husband	253	50.60
3	Sister/brother	28	5.60
4	Son/ Daughter	30	6.00
5	Miscellaneous	107	21.40
	TOTAL	500	100.00

TABLE 2.2

MOST EDUCATED ADULT IN THE FAMILY

ITEM NO.	EDUCATION LEVEL	WOMEN'S RESPONSE	
		Freq.	%age
1	Illiterate	95	19.00
2	Up To 5th	48	9.60
3	Between 6 - 12	63	12.60
4	Graduate	143	28.60
5	Highly Educated	95	19.00
6	Miscellaneous	56	11.20
	TOTAL	500	100.00

TABLE 2.3

LEAST EDUCATED IN THE FAMILY

ITEM NO.	LEAST EDUCATED	WOMEN'S RESPONSE	
		Freq.	%age
1	Father/ mother	142	28.40
2	Husband	194	38.80
3	Sister/brother	72	14.40
4	Son/ Daughter	7	1.40
5	Miscellaneous	85	17.00
	TOTAL	500	100.00

ECONOMIC STATUS

TABLE 3.1

ECONOMIC STATUS OF THE PARTIES

ITEM NO.	ECONOMIC STATUS	WOMEN'S RESPONSE	
		Freq.	%age
1	Home Worker	139	27.80
2	Self-employed	107	21.40
3	Service	174	34.80
4	Business	4	0.80
5	Miscellaneous	76	15.20
	TOTAL	500	100.00

TABLE 3.2

LEVEL OF INCOME

ITEM NO	INCOME	WOMEN'S RESPONSE	
		Freq.	%age
1	Less than 500	109	21.80
2	500 - 5000	178	35.60
3	5000 - 10000	82	16.40
4	10000 - 15000	67	13.40
5	15000 & above	64	12.80
	TOTAL	500	100.00

RELIGIOSITY

TABLE 4.1

RELIGIOUS PRACTICE			
ITEM NO.	RELIGIOSITY	WOMEN'S RESPONSE	
		Freq.	%age
1	Daily	202	40.40
2	On festival	103	20.60
3	Friday	112	22.40
4	During Crisis	8	1.60
5	Never	26	5.20
6	Miscellaneous	49	9.80
	TOTAL	500	100.00

TABLE 4.2

PRACTICE OF FAST DURING RAMZAN			
ITEM NO.	FAST - RAMZAN	WOMEN'S RESPONSE	
		Freq.	%age
1	Daily	296	59.20
2	Some Days	33	6.60
3	Friday	83	16.60
4	During Crisis	0	0.00
5	Miscellaneous	88	17.60
	TOTAL	500	100.00

TABLE 4.3

READING OF THE QURAN			
ITEM NO.	QURAN READING	WOMEN'S RESPONSE	
		Freq.	%age
1	Daily	155	31.00
2	Sometimes	103	20.60
3	On Occasions	51	10.20
4	Never	191	38.20
	TOTAL	500	100.00

TABLE 4.4

READING OF TRANSLATION OF THE QURAN			
ITEM NO.	QURAN READING	WOMEN'S RESPONSE	
		Freq.	%age
1	Arabic	268	53.60
2	English	50	10.00
3	Urdu	31	6.20
4	Miscellaneous	151	30.20
	TOTAL	500	100.00

TABLE 4.5

UNDERSTANDING OF THE QURANIC VERSES			
ITEM NO.	KNOWLEDGE OF QURAN VERSES	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	258	51.60
2	No	96	19.20
3	Partially know	146	29.20
	TOTAL	500	100.00

TABLE 4.6

KNOWLEDGE OF THE QURANIC LAWS			
ITEM NO.	KNOWLEDGE OF QURAN LAWS	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	104	20.80
2	No	197	39.40
3	Few laws	166	33.20
4	Miscellaneous	33	6.60
	TOTAL	500	100.00

TABLE 4.7

PRACTICE OF PARDAH IN ANY FORM			
ITEM NO.	PARDAH PRACTICE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	72	14.40
2	No	215	43.00
3	By Burqha	113	22.60
4	By Chadar	42	8.40
5	Miscellaneous	58	11.60
	TOTAL	500	100.00

STATUS OF THE PARTIES : DURING MARRIAGE NEGOTIATIONS

TABLE 5.1

STATUS OF THE PARTIES			
ITEM NO.	STATUS	WOMEN'S RESPONSE	
		Freq.	%age
1	Married	392	78.40
2	Single	6	1.20
3	Widow	10	2.00
4	Divorced	14	2.80
5	Separated	35	7.00
6	Miscellaneous	43	8.60
	TOTAL	500	100.00

TABLE 5.2

AGE OF GIRLS AT THE TIME OF MARRIAGE			
ITEM NO.	AGE	WOMEN'S RESPONSE	
		Freq.	%age
1	Less Than 10	27	5.40
2	Between 10 - 15	59	11.80
3	15 - 20	117	23.40
4	20 - 25	189	37.80
5	Above 30	108	21.60
	TOTAL	500	100.00

TABLE 5.3

HUSBAND AGE AT THE TIME OF MARRIAGE			
ITEM NO.	AGE	WOMEN'S RESPONSE	
		Freq.	%age
1	Less Than 10	4	0.80
2	Between 10 - 15	22	4.40
3	15 - 20	126	25.20
4	20 - 25	141	28.20
5	Above 30	207	41.40
	TOTAL	500	100.00

TABLE 5.4

TYPE OF MARRIAGE BETWEEN THE PARTIES			
ITEM NO.	TYPE OF MARRIAGE	WOMEN'S RESPONSE	
		Freq.	%age
1	Civil	2	0.40
2	Customary	59	11.80
3	Nikah	325	65.00
4	love come Nikah	72	14.40
5	Miscellaneous	42	8.40
	TOTAL	500	100.00

TABLE 5.5

MARRIAGE CONTRACTED BETWEEN RELATIVES			
ITEM NO.	MARRIAGE BETWEEN RELATIVE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	221	44.20
2	No	117	23.40
3	Not willing but just to Obey Parents	132	26.40
4	Miscellaneous	30	6.00
	TOTAL	500	100.00

TABLE 5.6

SEEN HUSBAND UNDER THE MARRIAGE CONTRACT			
ITEM NO.	TO SEE HUSBAND	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	211	42.20
2	No	173	34.60
3	Photograph Only	84	16.80
4	Miscellaneous	32	6.40
	TOTAL	500	100.00

TABLE 5.7

CONSIDERATIONS TAKEN INTO ACCOUNT DURING
MARRIAGE NEGOTIATIONS BY THE PARTIES

ITEM NO.	CONSIDERATION	WOMEN'S RESPONSE	
		Freq.	%age
1	Economic Status	239	47.80
2	Prestige	25	5.00
3	Looks	28	5.60
4	High Caste	56	11.20
5	Above All	146	29.20
6	Miscellaneous	6	1.20
	TOTAL	500	100.00

STANDARD NIKAH - NAMA

TABLE 6.1

KNOWLEDGE ABOUT CONTENTS OF THE NIKAH - NAMA

ITEM NO	CONTENTS	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	141	28.20
2	No	326	65.20
3	Miscellaneous	33	6.60
	TOTAL	500	100.00

TABLE 6.2

ACCEPTANCE OF THE STANDARD NIKAH -NAMA

ITEM NO	ACCEPTANCE TYPE	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	364	72.80
2	Disagree	111	22.20
3	No Comments	25	5.00
	TOTAL	500	100.00

TABLE 6.3

ACCEPTANCE OF THE NIKAH-NAMA BY
COMBINED EFFORTS OF MPLB* AND WOMEN GROUPS

ITEM NO	ACCEPTANCE TYPE	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	227	45.40
2	Disagree	226	45.20
3	No Comments	47	9.40
	TOTAL	500	100.00

TABLE 6.4

ACCEPTANCE OF NIKAH-NAMA MADE BY
THE MPLB* , WOMEN GROUPS AND ULEMA

ITEM NO	ACCEPTANCE TYPE	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	337	67.40
2	Disagree	102	20.40
3	No Comments	61	12.20
	TOTAL	500	100.00

TABLE 6.5

COMPULSORY REGISTRATION OF MARRIAGE

ITEM NO	MARRIAGE REGISTRATION	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	400	80.00
2	Disagree	50	10.00
3	No Comments	50	10.00
	TOTAL	500	100.00

TABLE 6.6

TO INCORPORATE CONDITIONS FOR
TRIPLE TALAQ IN NIKAH - NAMA

ITEM NO	CONDITION	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	276	55.20
2	Disagree	108	21.60
3	No Comments	116	23.20
	TOTAL	500	100.00

TABLE 6.7

TAKING MAINTENANCE IN CASE OF DISPUTE			
ITEM NO	TAKING MAINTENANCE	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	327	65.40
2	Disagree	103	20.60
3	No Comments	70	14.00
	TOTAL	500	100.00

TABLE 6.8

REFORMS UNDER STANDARD NIKAH - NAMA			
ITEM NO	REFORMS	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	355	71.00
2	Disagree	101	20.20
3	No Comments	44	8.80
	TOTAL	500	100.00

TABLE 6.9

TO ADD CLAUSE IN MARRIAGE CONTRACT UNDER EXISTING LAW			
ITEM NO	ADD CLAUSE	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	292	58.40
2	Disagree	118	23.60
3	No Comments	90	18.00
	TOTAL	500	100.00

TABLE 6.10

MODE OF MAHR AMOUNT IN ACCORDANCE WITH SHARIAH

ITEM NO	MODE OF PAYMENT	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	350	70.00
2	Disagree	98	19.60
3	No Comments	52	10.40
	TOTAL	500	100.00

TABLE 6.11

MODE OF PAYMENT ACCORDING TO
THE RESPONDENT WISHES

ITEM NO	ACCEPTANCE TYPE	WOMEN'S RESPONSE	
		Freq.	%age
1	Agree	154	30.80
2	Disagree	281	56.20
3	No Comments	65	13.00
	TOTAL	500	100.00

CHOICE AND ITS IMPACT DURING MARRIAGE NEGOTIATIONS

TABLE 7.1

KNOWLEDGE ABOUT MEANING OF CHOICE			
ITEM NO	CHOICE CONTENTS	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	441	88.20
2	NO	45	9.00
3	No Comments	14	2.80
	TOTAL	500	100.00

TABLE 7.2

MARRIAGE IN ACCORDANCE WITH THEIR PARENTS CHOICE

ITEM NO	MARRIAGE BY PARENT WISH	WOMEN'S RESPONSE	
		Freq.	%age
1	Parents Wish	420	84.00
2	Daughter Wish	63	12.60
3	No Comments	17	3.40
	TOTAL	500	100.00

TABLE 7.3

AWARENESS ABOUT RIGHT TO CHOICE UNDER ISLAM

ITEM NO	RIGHT TO CHOICE	WOMEN'S RESPONSE	
		Freq.	%age
1	Aware	301	60.20
2	Not Aware	153	30.60
3	No Comments	46	9.20
	TOTAL	500	100.00

TABLE 7.4

**AWARENESS OF QURANIC PROVISION
REGARDING MARRIAGE CONTRACT**

ITEM NO	AWARENESS	WOMEN'S RESPONSE	
		Freq.	%age
1	Aware	230	46.00
2	Not Aware	246	49.20
3	No Comments	24	4.80
	TOTAL	500	100.00

TABLE 7.5

CONFLICT BETWEEN PARENTS AND DAUGHTER CHOICE

ITEM NO	MODE OF CHOICE	WOMEN'S RESPONSE	
		Freq.	%age
1	Parent's Choice	410	82.00
2	Girl's Choice	70	14.00
3	No Comments	20	4.00
	TOTAL	500	100.00

TABLE 7.6

PARENTS SOUGHT CONSENT AT THE TIME OF NIKAH

ITEM NO	CONSENT AT NIKAH	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	442	88.40
2	No	30	6.00
3	No Comments	28	5.60
	TOTAL	500	100.00

TABLE 7.7

**IMPORTANCE OF THE CONSENT OF GIRL
DURING MARRIAGE NEGOTIATION**

ITEM NO	CONSENT POSITION	WOMEN'S RESPONSE	
		Freq.	%age
1	Consented Before Acceptance	80	16.00
2	Consented After Acceptance	219	43.80
3	Not consented	164	32.80
4	Miscellaneous	37	7.40
	TOTAL	500	100.00

TABLE 7.8

CONSENT OF GIRL AND ITS IMPLICATION

ITEM NO	WOMEN CONSENT	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	308	61.60
2	No	179	35.80
3	Miscellaneous	13	2.60
	TOTAL	500	100.00

TABLE 7.9

ACCEPTED MODE OF CONSENT : UNDER ISLAM

ITEM NO	MODE OF CONSENT	WOMEN'S RESPONSE	
		Freq.	%age
1	Explicitly Yes	338	67.60
2	Your Silence	67	13.40
3	Nodding Head	87	17.40
4	Miscellaneous	8	1.60
	TOTAL	500	100.00

TABLE 7.10

**IMPORTANCE OF CONSENT OF BOTH
UNDER MARRIAGE CONTRACT**

ITEM NO	CONSENT OF BOTH	WOMEN'S RESPONSE	
		Freq.	%age
1	Only Parents	292	58.40
2	Only Girl	41	8.20
3	Both	167	33.40
	TOTAL	500	100.00

**VIEWS ABOUT APPLICATION OF ROLE OF
THE MPL* AND INDIAN JUDICIARY**

TABLE 8.1

ROLE OF MUSLIM PERSONAL LAW AND INDIAN JUDICIARY

ITEM NO	MPL* & INDIAN JUDICIARY	WOMEN'S RESPONSE	
		Freq.	%age
1	Applied Correctly	149	29.80
2	Not Applied Correctly	302	60.40
3	Miscellaneous	49	9.80
	TOTAL	500	100.00

TABLE 8.2

MUSLIM OBSERVE NOT ONLY MPL* BUT ALSO THEIR TRADITIONAL AND CUSTOMAR

ITEM NO	ACCEPTANCE TYPE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	363	72.60
2	No	58	11.60
3	Miscellaneous	79	15.80
	TOTAL	500	100.00

TABLE 8.3

TENSION BETWEEN MPL* AND PROCEDURAL LAW

ITEM NO	TENSION BETWEEN BOTH	WOMEN'S RESPONSE	
		Freq.	%age
1	MPL* Prevails	393	78.60
2	Procedural Law Prevails	38	7.60
3	Miscellaneous	69	13.80
	TOTAL	500	100.00

TABLE 8.4

**EXISTENCE OF LOOPHOLES
IN MUSLIM PERSONAL LAW**

ITEM NO	LOOPHOLES IN MPL*	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	281	56.20
2	No	161	32.20
3	Miscellaneous	58	11.60
	TOTAL	500	100.00

TABLE 8.5

NEED FOR THE CHANGES UNDER MPL*

ITEM NO	MPL* - NEEDS CHANGE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	290	58.00
2	No	173	34.60
3	Miscellaneous	37	7.40
	TOTAL	500	100.00

GENERAL VIEWS FOR SOME OTHER IMPORTANT ISSUES

TABLE 9.1

FREEDOM FOR THE MOVEMENT IN THE CITY

ITEM NO	FREE TO MOVE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	390	78.00
2	No	79	15.80
3	Not Alone	31	6.20
	TOTAL	500	100.00

TABLE 9.2

IS MPL* DISCRIMINATORY TO WOMEN

ITEM NO	MPL* -DISCRIMINATORY	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	299	59.80
2	No	179	35.80
3	Miscellaneous	22	4.40
	TOTAL	500	100.00

TABLE 9.3

MPL* IS DISCRIMINATORY TO WHICH ISSUES MOST

ITEM NO	ISSUES	WOMEN'S RESPONSE	
		Freq.	%age
1	Talaq	240	48.00
2	Polygamy	34	6.80
3	Maintenance	89	17.80
4	Mahr	22	4.40
5	Above All	72	14.40
6	Miscellaneous	43	8.60
	TOTAL	500	100.00

TABLE 9.4

ABOLITION OF UNILATERAL TALAQ IN FUTURE

ITEM NO	ABOLITION OF TALAQ	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	335	67.00
2	No	75	15.00
3	Miscellaneous	90	18.00
	TOTAL	500	100.00

TABLE 9.5

ABOLITION OF PRACTICE OF POLYGAMY IN FUTURE

ITEM NO	ABOLITION OF POLYGAMY	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	202	40.40
2	No	251	50.20
3	Miscellaneous	47	9.40
	TOTAL	500	100.00

TABLE 9.6

PAYMENT OF MAHR AMOUNT AFTER DIVORCE

ITEM NO	MAHR PAYMENT ON DIVORCE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	393	78.60
2	No	47	9.40
3	Miscellaneous	60	12.00
	TOTAL	500	100.00

TABLE 9.7

KNOWLEDGE ABOUT THE MEANING OF THE TERM IDDAT

ITEM NO	KNOWLEDGE OF IDDAT	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	414	82.80
2	No	24	4.80
3	Miscellaneous	62	12.40
	TOTAL	500	100.00

TABLE 9.8

OPINION TO FOLLOW IDDAT IN FUTURE EVENTS

ITEM NO	FOLLOWING IDDAT	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	204	40.80
2	No	275	55.00
3	Miscellaneous	21	4.20
	TOTAL	500	100.00

TABLE 9.9

DOWRY RETURNED AFTER DIVORCE

ITEM NO	DOWRY RETURNED	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	232	46.40
2	No	109	21.80
3	Miscellaneous	159	31.80
	TOTAL	500	100.00

TABLE 9.10

VIEWS ABOUT IDEAL SIZE OF THE FAMILY

ITEM NO	FAMILY SIZE	WOMEN'S RESPONSE	
		Freq.	%age
1	One Child	123	24.60
2	Two Child	173	34.60
3	More Than Two	204	40.80
	TOTAL	500	100.00

TABLE 9.11

VIEWS ABOUT THE NECESSITY OF THE MALE CHILD

ITEM NO	MALE CHILD	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	183	36.60
2	No	239	47.80
3	Miscellaneous	78	15.60
	TOTAL	500	100.00

TABLE 9.12

POLYGAMY IS ISLAMIC

ITEM NO	POLYGAMY IS ISLAMIC	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	394	78.80
2	No	58	11.60
3	Miscellaneous	48	9.60
	TOTAL	500	100.00

TABLE 9.13

**IF NO MALE CHILD HUSBAND GO FOR SECOND
MARRIAGE WITH WIFE CONSENT**

ITEM NO	SECOND MARRIAGE IF NO MALE CHILD	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	66	13.20
2	No	364	72.80
3	Miscellaneous	70	14.00
	TOTAL	500	100.00

TABLE 9.14

HUSBAND LIABILITY TO MAINTAIN HIS WIFE & SIBLINGS

ITEM NO	MAINTENANCE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	393	78.60
2	No	65	13.00
3	Miscellaneous	42	8.40
	TOTAL	500	100.00

TABLE 9.15

USE OF CONTRACEPTIVES AND ABORTION IS UN-ISLAMIC

ITEM NO	CONTRACEPTIVE / ABORTION UN-ISLAMIC	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	363	72.60
2	No	58	11.60
3	No Comments	79	15.80
	TOTAL	500	100.00

TABLE 9.16

FREEDOM TO SPEND INCOME ACCORDING TO HER WISHES

ITEM NO	SPEND INCOME	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	289	57.80
2	No	131	26.20
3	Miscellaneous	80	16.00
	TOTAL	500	100.00

TABLE 9.17

WIFE HANDOVER HER INCOME TO HER HUSBAND

ITEM NO	INCOME HANDOVER TO HUSBAND	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	195	39.00
2	No	270	54.00
3	Miscellaneous	35	7.00
	TOTAL	500	100.00

TABLE 9.18

FREEDOM TO OPEN AND OPERATE
HER BANK ACCOUNT INDEPENDENTLY

ITEM NO	OPERATE BANK ACCOUNT	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	202	40.40
2	No	59	11.80
3	Miscellaneous	239	47.80
	TOTAL	500	100.00

TABLE 9.19

FREEDOM TO OPERATE JOINT BANK ACCOUNT INDEPENDENTLY

ITEM NO	JOINT BANK ACCOUNT	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	203	40.60
2	No	62	12.40
3	Miscellaneous	235	47.00
	TOTAL	500	100.00

TABLE 9.20

FAMILY INCOME LEVEL WHEN BOTH ARE EARNING

ITEM NO	JOINT FAMILY INCOME	WOMEN'S RESPONSE	
		Freq.	%age
1	High	133	26.60
2	Medium	131	26.20
3	Low	72	14.40
4	Very Low	150	30.00
5	Miscellaneous	14	2.80
	TOTAL	500	100.00

TABLE 9.21

INHERITANCE RIGHT IN FATHER'S PROPERTY

ITEM NO	INHERITANCE IN FATHER'S PROPERTY	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	392	78.40
2	No	84	16.80
3	Miscellaneous	24	4.80
	TOTAL	500	100.00

TABLE 9.22

ENACTMENT OF THE MUSLIM MATRIMONIAL CODE IN FUTURE

ITEM NO	MUSLIM CODE	WOMEN'S RESPONSE	
		Freq.	%age
1	Yes	411	82.20
2	No	70	14.00
3	Miscellaneous	19	3.80
	TOTAL	500	100.00

The United Nations on the Rights of Women

Article 1 -- Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2 -- All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women....

Article 3 -- All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

Article 4 -- All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

- (a) The right to vote in all elections and be eligible for election to all publicly elected bodies;
- (b) The right to vote in all public referenda;
- (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.

Article 5 -- Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.

Article 6 --

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law....

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:

- (a) Women shall have the same right as men as to free choice of a spouse and to enter into marriage rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount.

....

- (c) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 7 -- All provisions of penal codes which constitute discrimination against women shall be repealed.

Article 8 -- All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

Article 9 -- All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels....

Article 10 --

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life....

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

Article 11 -- 1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

Excerpted from The United Nations Declaration on the Rights of Women, adopted November 7, 1967.

Universal Islamic Declaration of Human Rights

21 Dhul Qaidah 1401 19 September 1981

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*This is a declaration for mankind, a guidance and instruction to those who fear God.
(Al Qur'an, Al-Imran 3:138)*

Foreword

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler,

government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this *Declaration of Human Rights* will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This *Declaration of Human Rights* is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th Century of the Islamic era, the first being the *Universal Islamic Declaration* announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from 12 to 15 April 1980.

The *Universal Islamic Declaration of Human Rights* is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

Paris 21 Dhul Qaidah 1401 Salem Azzam
19th September 1981 *Secretary General*

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all aware.
(*Al Qur'an, Al-Hujurat 49:13*)

WHEREAS the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

WHEREAS the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

WHEREAS Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

WHEREAS by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

Therefore we, as Muslims, who believe

- a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;
- b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;
- c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;
- d) that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;
- e) in inviting all mankind to the message of Islam;
- f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;
- g) in our obligation to establish an Islamic order:

- i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;
- ii) wherein all human beings are born free;
- iii) wherein slavery and forced labour are abhorred;
- iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;
- v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;
- vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;
- vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;
- viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;
- ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*Shura*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;
- x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;
- xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;
- xii) wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;
- xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;
- xiv) wherein every effort shall be made to
 - (a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,

(b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.

I Right to Life

a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

II Right to Freedom

a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.

b) Every individual and every people has the inalienable right to freedom in all its forms— physical, cultural, economic and political — and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

III Right to Equality and Prohibition Against Impermissible Discrimination

a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.

b) All persons shall be entitled to equal wage for equal work.

c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

IV Right to Justice

- a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.
- b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- c) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).
- d) No person shall be discriminated against while seeking to defend private and public rights.
- e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

V Right to Fair Trial

- a) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.
- b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.
- c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.
- d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.
- e) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

VI Right to Protection Against Abuse of Power

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be *reasonably* raised

VII Right to Protection Against Torture

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

VIII Right to Protection of Honour and Reputation

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

IX Right to Asylum

a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

X Rights of Minorities

a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

XI Right and Obligation to Participate in the Conduct and Management of Public Affairs

a) Subject to the Law, every individual in the community (*Ummah*) is entitled to assume public office.

b) Process of free consultation (*Shura*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

XII Right to Freedom of Belief, Thought and Speech

a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.

b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.

c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.

d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.

e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

XIII Right to Freedom of Religion

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

XIV Right to Free Association

a) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (*ma'roof*) and to prevent what is wrong (*munkar*).

b) Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is

obliged to establish conditions so as to allow its members full development of their personalities.

XV The Economic Order and the Rights Evolving Therefrom

- a) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.
- b) All human beings are entitled to earn their living according to the Law.
- c) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.
- d) The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah, levied and collected in accordance with the Law.
- e) All means of production shall be utilised in the interest of the community (*Ummah*) as a whole, and may not be neglected or misused.
- f) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.
- g) All economic activities are permitted provided they are not detrimental to the interests of the community(*Ummah*) and do not violate Islamic laws and values.

XVI Right to Protection of Property

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

XVII Status and Dignity of Workers

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

XVIII Right to Social Security

b) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

Explanatory Notes

1 In the above formulation of Human Rights, unless the context provides otherwise:

a) the term 'person' refers to both the male and female sexes.

b) the term 'Law' denotes the *Shari'ah*, i.e. the totality of ordinances derived from the Qur'an and the Sunnah and any other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

2 Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3 In the exercise and enjoyment of the rights referred to above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of meeting the just requirements of morality, public order and the general welfare of the Community (*Ummah*).

The Arabic text of this *Declaration* is the original.